

Calendar No. 422

104TH CONGRESS }
2d Session }

SENATE

{ REPORT
104-276 }

SUSTAINABLE FISHERIES ACT

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 39



MAY 23, 1996.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

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MAY 23, 1996.—Ordered to be printed

Mr. PRESSLER, from the Committee on Commerce, Science, and
Transportation, submitted the following

REPORT

[To accompany S. 39]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 39) “A bill to amend the Magnuson Fishery Conservation and Management Act to authorize appropriations, to provide for sustainable fisheries, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

PURPOSE OF THE BILL

The purpose of S. 39, the Sustainable Fisheries Act, is to extend the authorization of appropriations for the Magnuson Fishery Conservation and Management Act (Magnuson Act) through fiscal year (FY) 2000. The bill, as reported, also would: (1) require action to prevent overfishing and rebuild depleted fisheries; (2) expand existing Federal authority to identify and protect essential fish habitat; (3) minimize waste and discards of unusable fish; (4) streamline the approval process for fishery management plans and regulations; (5) tighten financial disclosure and conflict-of-interest requirements for members of regional fishery management councils (Councils); (6) impose a moratorium on management programs that allow individual fishing quotas and establish a lien registry and fees for such plans; (7) authorize fishing capacity reduction programs and fisheries disaster relief; (8) broaden and update federal fishery financing programs; and (9) reauthorize other fishery programs and statutes, including the Interjurisdictional Fisheries Act, the Anadromous Fish Conservation Act, and the Atlantic Coastal Fisheries Cooperative Management Act.

BACKGROUND AND NEEDS

The fishery resources found off U.S. shores are a valuable national heritage. In 1994, U.S. commercial fisheries produced \$3.8 billion in dockside revenues, contributing a total of \$20.2 billion (of value added) to the Gross National Product. By weight of catch, the United States is the world's fifth largest fishing nation, harvesting almost five million tons of fish annually. The United States also is the second largest seafood exporter, with exports valued at over \$3 billion in 1994. In addition to supporting the commercial seafood industry, U.S. fishery resources provide enjoyment for about 15 million saltwater anglers who take home more than 350 million fish each year.

MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT

The Magnuson Act provides a national framework for conserving and managing marine fisheries within the U.S. exclusive economic zone (EEZ) that extends from the seaward boundary of each coastal state and territory out to 200 nautical miles from shore, through eight Councils. Each Council is composed of government, industry, recreational, academic and environmental representatives and has authority over the fisheries in their respective areas of the EEZ. The voting members of each Council include the regional fisheries director of the National Oceanic and Atmospheric Administration (NOAA), the chief fishery official from each state, and from four to 12 individuals with fishery expertise. The primary responsibility of a Council is to develop fishery management plans and amendments to approved plans for important fishery resources. Each plan must be consistent with national standards established under the Magnuson Act, including a requirement that the plan prevent overfishing.

The Secretary of Commerce (Secretary), through NOAA's National Marine Fisheries Service (NMFS), administers the Magnuson Act and reviews, approves, and implements each fishery management plan prepared by a Council. The Secretary is authorized to prepare a management plan if: (1) a Council fails to prepare a plan within a reasonable period of time for a fishery that requires conservation and management; or (2) the Secretary disapproves a plan or revised plan and the Council involved fails to submit a revised or further revised plan. In addition, the Secretary is responsible for the development of plans for wide-ranging Atlantic fish species like tuna and swordfish. Fisheries law enforcement is the joint responsibility of the Secretary and the Secretary of Transportation through the Coast Guard.

In the twenty years since enactment of the Magnuson Act, the fishery management process has continued to change and evolve. In this reauthorization, a number of procedural issues have been raised including: authority to issue individual fishing quotas (IFQs); streamlining the regulatory process and increasing flexibility; conflicts of interest in the Councils; division of responsibility between the Secretary and the Councils; management of wide-ranging fisheries like tuna; Federal-state jurisdiction in the management of coastal fisheries; and Native American representation on the Pacific Council.

One of the Magnuson Act goals—the “Americanization” of fisheries within the U.S. 200-mile zone—has been largely achieved. Unfortunately, the elimination of foreign fishing has not been accompanied by the expected transition to stable and sustainable harvests by American fishermen. A 1995 NOAA report estimates that the long-term potential yield for U.S. fisheries could be as high as 10.3 million tons annually, about 30 percent higher than current harvests. Such long-term estimates are difficult to calculate, and their accuracy is open to question. However, more effective conservation and management eventually could lead to stable harvests at higher levels and substantial long-term economic benefit to the Nation. Among the challenges to sustainable use of U.S. fishery resources are: (1) overfishing; (2) marine habitat destruction; (3) waste and bycatch of nontarget species; and (4) limited scientific information and understanding.

OTHER AUTHORIZATIONS

Atlantic Coastal Fisheries Cooperative Management Act

This Act is patterned after the successful Atlantic Striped Bass Conservation Act to improve management of coastal fisheries along the Atlantic Coast. The Act encourages all states to cooperate by establishing a procedure under which the Secretary is authorized to impose a Federal fishing moratorium on Atlantic states that violate interstate fishery management guidelines. The procedure is as follows: (1) the Atlantic States Marine Fisheries Commission (Atlantic Commission) would develop coastal fishery management plans identifying state requirements and establishing a timetable for implementation; (2) the Atlantic Commission would monitor state efforts and notify the Secretaries of Commerce and the Interior if a state fails to comply; (3) the Secretary would review and make a finding on whether the state’s failure in compliance threatened the conservation of the involved fishery; (4) upon an affirmative finding, the Secretary would impose a federally enforced moratorium for that fishery within the waters of the offending state; and (5) the moratorium would be lifted when the state came into compliance with the applicable plan.

The Anadromous Fish Conservation Act

This law was enacted in 1965 for the purpose of managing, conserving and enhancing the Nation’s anadromous fishery resources, including those of the Great Lakes and Lake Champlain. Anadromous fish are those species which live in marine waters during their adult lives, then return to freshwater rivers to spawn. The Anadromous Fish Conservation Act establishes the only comprehensive effort for managing anadromous fish resources. Among the species covered are salmon, striped bass, shad, sturgeon, and steelhead trout, all of which contribute significantly to commercial and recreational fisheries in 32 coastal and Great Lake states.

Interjurisdictional Fisheries Act

In 1986, the Interjurisdictional Fisheries Act was enacted to promote and encourage the management of important interjurisdictional fishery resources. These resources include nearshore fish-

eries which typically occur in waters under the jurisdiction of one or more states and the Federal government. The Interjurisdictional Fisheries Act encourages the management of interjurisdictional fishery resources throughout the range and provides grants to States for research in support of such management. It also authorizes emergency grants to states to mitigate the impacts of commercial fishery failures. In 1992, following Hurricane Andrew, \$65 million was appropriated under the Interjurisdictional Fisheries Act to compensate fishermen for their losses. In August, 1995, Secretary Brown proposed to make \$55 million of this appropriation available for fishery disaster relief in New England, the Gulf of Mexico, and the Northwest. However, the current law imposes restrictions on those funds that are impediments to their use in all three regions.

LEGISLATIVE HISTORY

The Magnuson Act was last reauthorized in 1990 (Public Law 101-627), and the current authorization of appropriations expired on September 30, 1993. S. 39, the Sustainable Fisheries Act, was introduced by Senators Stevens, Kerry and Murkowski on January 4, 1995, and was referred to the Committee on Commerce, Science, and Transportation. Senators Hollings, Pressler, Lott, Inouye and Simpson also are cosponsors. The introduced bill represented more than two years of work with numerous meetings and public hearings held in Washington, D.C. and in coastal regions around the United States. S. 39 is similar to legislation introduced in the 103rd Congress (S. 2538) but not acted upon. The Sustainable Fisheries Act is a bipartisan effort to strengthen management and conservation of U.S. fishery resources, address social and economic issues raised by fishermen and coastal communities seeking to maintain or develop sustainable fisheries, and reform the management process.

On March 4, 1995, oversight hearings were conducted by Senator Stevens, Chairman of the Subcommittee on Oceans and Fisheries, in Boston, Massachusetts and Rockport, Maine. Oversight hearings also were held on March 18, 1995 in Seattle, Washington; March 25, 1995 in Anchorage, Alaska; May 13, 1995 in New Orleans, Louisiana; July 15, 1995 in Charleston, South Carolina and July 17, 1995 in Morehead City, North Carolina. At these hearings over 175 individuals provided testimony on a wide range of issues related to the Magnuson Act in general and the specific provisions of S. 39.

On May 22, 1995, Senators Breaux, Lott, Gorton and Hutchison provided to the Subcommittee the text of an amendment in the nature of a substitute for S. 39 for consideration as the authorization process moved forward.

On March 28, 1996, in open executive session, the Committee without objection, ordered S. 39 reported with amendments. The Committee considered an amendment in the nature of a substitute that modified and incorporated legislative proposals from the bill as introduced, the House-passed companion bill, H.R. 39, the substitute legislation developed by Senator Breaux and others, and numerous recommendations made during the hearing process. In addition, the Committee agreed to five amendments: (1) a package of technical changes offered by Senator Stevens; (2) a moratorium on new community development quotas offered by Senator Stevens; (3)

Senator Gorton's proposal to include a new national standard on safety of life at sea; (4) an amendment offered by Senator Burns requiring a study on stock identification of salmon and steelhead trout; and (5) an amendment offered by Senator Snowe modifying the new national standard on fishing communities to require that adverse impacts on such communities be minimized. Concerns regarding the Snowe amendment were raised by members at the executive session and a commitment was made to address such concerns before the legislation was considered by the full Senate.

SUMMARY OF MAJOR PROVISIONS

S. 39, the Sustainable Fisheries Act, is a comprehensive reauthorization of the Magnuson Act that would extend the authorization of appropriations through FY 2000, strengthen conservation efforts and rebuild depleted fisheries. Major provisions include the following:

AUTHORIZATION OF APPROPRIATIONS

For the Magnuson Act, the bill would authorize a funding level of \$151 million in FY 1997 and provide for increases of \$4 million annually through FY 2000. The reported bill also would extend the authorization of appropriations through FY 2000 for several other marine statutes, including the Interjurisdictional Fisheries Act, the Atlantic Coastal Fisheries Cooperative Management Act, and the Anadromous Fish Conservation Act, and for other NOAA marine fisheries programs.

PREVENTING OVERFISHING AND REBUILDING DEPLETED FISHERIES

The reported bill defines "overfished" and "overfishing" in the Magnuson Act and would require fishery management plans to specify criteria for determining when a fishery is overfished and include measures to rebuild any overfished fishery. The bill also calls for the Secretary to report annually to Congress and the Councils on the status of fisheries, and to identify fisheries that are overfished or approaching an overfished condition. A Council would have one year to come up with a plan to stop overfishing and rebuild the fishery, and the Secretary would be required to step in if the Council fails to act. While a plan is under development, interim measures to reduce overfishing could be implemented. Finally, the substitute would amend the existing definition of "optimum" with respect to fishery yield to cap fish harvests at the maximum sustainable yield.

BYCATCH AND WASTE REDUCTION

In the process of catching marketable seafood, nontarget fish are also taken; this incidental harvest is often termed "bycatch". The bill would add a new national standard to the Magnuson Act requiring that conservation and management measures minimize bycatch and minimize the mortality of bycatch which cannot be avoided. The bill also would mandate the assessment of bycatch levels in each fishery and require that steps be taken to reduce bycatch.

In addition to the general provisions, the bill contains a more stringent requirement for the North Pacific and would authorize the North Pacific Council to use fees and non-transferable annual allocations of regulatory discards as incentives to reduce bycatch and bycatch rates. Finally, the bill would require the Secretary to conclude an assessment of the impact of shrimp trawling on other fishery resources in the Gulf of Mexico and South Atlantic. It also would require that measures to reduce shrimp bycatch: (1) be applicable to fishing throughout the range of the bycatch species; and (2) avoid serious adverse environmental impacts.

HABITAT PROTECTION

The bill would define “essential fish habitat” for the purposes of the Magnuson Act. For each fishery, the Councils would be required to identify essential fish habitat and minimize adverse effects on habitat due to fishing. The bill also expands the existing authority of the Councils and the Secretary to comment on Federal actions that would affect habitat.

REFORMING THE COUNCIL PROCESS

The bill simplifies and tightens the approval process for fishery management plans and regulations. It also would establish conflict-of-interest procedures for a Council member’s recusal from voting on Council decisions that would have a “significant and predictable effect” on any personal financial interest. In addition, the bill would require Councils to keep detailed minutes of meetings and allow any voting member of the Council to request that a matter be decided by roll call vote. Finally, the bill would require the Secretary to develop guidelines for using negotiated rulemaking procedures in the development of difficult conservation and management measures.

INDIVIDUAL FISHING QUOTAS (IFQS)

The bill would prohibit the Councils from submitting and the Secretary from approving any new IFQ programs for the duration of the authorization period (through September 30, 2000) and would direct the Secretary to submit a comprehensive report on IFQs to the Congress by June 1, 1999. The report would examine controversial IFQ-related issues such as initial allocation, transferability, and foreign ownership. The bill also would establish a lien registry system for all limited access permits and require the Secretary to establish a fee of up to three percent of the annual value of fish harvested under IFQ programs to pay for management costs.

COMMUNITY DEVELOPMENT QUOTAS (CDQS)

The North Pacific Council has implemented CDQ programs that set aside about 7.5 percent of the Bering Sea harvests of pollock, halibut and sablefish for 55 villages in western Alaska. In addition, that Council has recommended CDQs in several other major Bering Sea fisheries, including crab. The bill legislatively mandates both current and proposed Bering Sea CDQ programs and authorizes similar programs in the western Pacific.

EXTENSION OF STATE JURISDICTION

Several states have expressed interest in extending state jurisdiction to allow state enforcement and regulations in Federal waters for fisheries which have no approved fishery management plan. However, concerns have been expressed that such state authority would undermine the Council process. The reported bill makes changes only for Alaska fisheries with respect to this issue.

SCIENTIFIC BASIS FOR MANAGEMENT

The draft would create a new title IV of the Magnuson Act, titled "FISHERY MONITORING AND RESEARCH," which would contain existing Magnuson Act sections (with some modifications) dealing with data collection and fisheries research, as well as new sections to establish guidelines for fishing vessel observers and to require the development of a plan for fishing vessel registration. The new title also includes specific requirements for ecosystem research, Gulf of Mexico red snapper stock assessments, use of commercial vessels in research activities, and donation of bycatch to charitable organizations.

REDUCING FISHING CAPACITY

The bill would authorize the Secretary to implement a vessel or fishing permit buyout program if adequate steps have been taken to ensure that vessels or permits are removed permanently from the fishery and the program is needed for conservation and management. Eligible funding sources could include a portion of the duties collected on the importation of fish and fish products, disaster funds, state or nonprofit contributions, and industry fees (if the appropriate Council approves the fees and the industry agrees to the fees by a two-thirds vote through a referendum of fishery participants). The bill would also authorize the Secretary to provide a Federal guarantee on any debt obligations used to finance the program.

FISHERIES DISASTER RELIEF

At the discretion of the Secretary or at the request of an affected state or fishing community, the Secretary would be required to determine whether a commercial fishery failure had occurred as a result of a fishery resource disaster and to make funds available to an affected State, fishing community, or individual, with the Federal cost-share not to exceed 75 percent of the total cost.

VESSEL REFINANCING

The bill would make several changes to the Fisheries Obligation Guarantee (FOG) Program under Title XI of the Merchant Marine Act, 1936. For fisheries with a rebuilding effort under way, the Secretary would be authorized to refinance vessel mortgages, allowing an extended repayment schedule (including interest-only payments) that reflects reduced vessel income due to stock rebuilding restrictions. The bill also would amend the FOG program to allow loan guarantees to be placed through the Federal Financing Bank and the Secretary to recoup for administrative costs any savings

achieved by placement through this bank, and provide loan guarantees for purchase of IFQs by entry-level fishermen.

PACIFIC INSULAR AREA FISHERY AGREEMENTS

The bill includes provisions based on an Administration initiative to provide Pacific Insular Area commonwealths (Guam, American Samoa, and the Northern Marianas) with limited autonomy in managing their fishery resources. The provisions would amend the Magnuson Act to allow the Secretary of State, in concurrence with Pacific Insular Area Governors and the Western Pacific Council, to negotiate fishery agreements with other nations desiring to fish in those areas. Funds generated by such agreements would be available to the Governors for fishery conservation and management. Funds generated from agreements for smaller island areas (which are U.S. possessions) would be used for fishery conservation and management in those areas and in the State of Hawaii with Western Pacific Council oversight.

ESTIMATED COSTS

In the opinion of the Committee, it is necessary in order to expedite the business of the Senate to dispense with the requirement of paragraph 11(a) of rule XXVI of the Standing Rules of the Senate (relating to an estimate of the costs of carrying out the reported bill), and to dispense with the requirement of section 403 of the Congressional Budget Act of 1974, because the estimates were not submitted to the Committee by the Congressional Budget Office before this report was filed.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported.

NUMBER OF PERSONS AFFECTED

The bill, as reported, amends the Magnuson Act by requiring new regulations to be implemented by the Secretary in the administration of programs for the conservation and management of the fishery resources. The total number of individuals affected by these requirements, though, will not be significantly different than those currently regulated by the agency in the fishery and should be consistent with current levels.

ECONOMIC IMPACT

Section 104 of the bill as reported, authorizes \$147 million for FY 1996; \$151 million for FY 1997; \$155 million for FY 1998; \$159 million for FY 1999 and \$163 million for FY 2000 for the administration of the Magnuson Act. While authorization of appropriations for the Magnuson Act did expire in 1993, Congress has continued to appropriate between \$98 million and \$127 million a year for ongoing fisheries management programs. Also, other provisions of the bill, as reported, explicitly authorize additional appropriations for fishery financing programs and other fishery statutes and pro-

grams. Overall funding levels are modest and are not expected to have any inflationary impact.

PRIVACY

S. 39, as reported, will have no adverse impact on the personal privacy of the individuals or businesses affected.

PAPERWORK

While this legislation reauthorizes many programs currently being implemented, it does require new regulations and additional requirements to be made to these programs. Some examples of these include additional requirements that Councils must incorporate into fishery management plans the identification and description of fish habitat, efforts to rebuild depleted fish stocks and measures to minimize harm to non-target fish, specifications for an evaluation of gear used in the fishery, data collection and a central lien registry system for limited access permits, and a fishing capacity reduction program. It is envisioned that these additional requirements would not be burdensome in the amount of paperwork required. In addition, section 202 of the reported bill calls for the Secretary to work with state fishery commissions and other entities to develop a plan for consolidating data collection and management efforts to minimize paperwork requirements for commercial fishermen. The reported bill would also simplify the review and approval process of fishery management plans.

SECTION-BY-SECTION ANALYSIS

Section 1.—Short title; Table of contents

This section cites the short title of the bill as the “Sustainable Fisheries Act” and provides a table of contents of its provisions.

TITLE I—CONSERVATION AND MANAGEMENT

Section 101.—Amendment of the Magnuson Fishery Conservation and Management Act

This section specifies that unless otherwise provided, amendments contained in the reported bill shall be considered to be made to the Magnuson Act.

Section 102.—Findings; Purposes; Policy

Section 102 would amend section 2(a) of the Magnuson Act to add Congressional findings that: (1) habitat losses have been a contributing factor to the decline of some fish stocks; (2) a national program for the conservation and management of fishery resources is necessary to facilitate the protection of essential fish habitat; (3) habitat considerations should receive increased attention for the conservation and management of fishery resources; and (4) certain unique circumstances make fisheries resources important to sustained economic growth in Pacific Insular Areas.

Section 102 also would amend section 2(b) of the Magnuson Act to add to the declared purposes of the Act language to ensure that optimum yield determinations promote the development of U.S. fisheries in a non-wasteful manner and to promote the protection

of essential fish habitat in the review of federal activities that affect or have the potential to affect essential fish habitat.

Finally, section 102 would amend section 2(c) of the Magnuson Act to establish the policy that the national fishery conservation and management program encourages the development of practical measures that minimize bycatch and ensures that fishery resources adjacent to the Pacific Insular Area are explored, developed, conserved, and managed for the benefit of people of that area and of the United States.

Section 103.—Definitions

Section 103 would amend section 3 of the Magnuson Act to amend certain existing definitions and add a number of new definitions. Section 103 would add new definitions for the terms: “bycatch”, “commercial fishing”, “economic discards”, “essential fish habitat”, “fishing community”, “individual fishing quota”, “overfishing” and “overfished”, “Pacific Insular Area”, “recreational fishing”, “regulatory discards”, and “vessel subject to the jurisdiction of the United States”.

The term “bycatch” would be defined to mean fish which are harvested by a fishing vessel, but which are not sold or kept for personal use. Bycatch includes both “economic discards” and “regulatory discards.” Economic discards are those fish which are the target of a fishery, but which fishermen decide not to retain for economic reasons. Regulatory discards are those fish (whether or not the target species) which fishermen are required by regulation to discard or which they are required to retain but are prevented by regulation from selling. The term “bycatch” would exclude fish caught and released alive that are the target species of catch and release recreational fishing programs. The purpose of this exclusion is to recognize and encourage the conservation benefits of catch and release programs. However, the term “bycatch” does cover fish that are not released alive, and recreationally-caught fish that are regulatory discards.

The term “commercial fishing” would be defined to mean fishing in which the fish harvested enter or are intended to enter commerce through sale, barter or trade, while “recreational fishing” would be defined to mean fishing for sport or pleasure. Fishing from a charter vessel (a vessel carrying a passenger for hire as defined in section 2101(21a) of title 46, United States Code) is not explicitly included in either of these definitions. The Committee recognizes that the Councils address fishing from charter vessels differently in different regions. As a basic matter, the Committee believes the allowable catch for such fishing should be dealt with separately from the allowable catch for commercial fishing from vessels not carrying a passenger for hire.

The term “individual fishing quota” would mean a Federal permit under a limited access system authorizing harvest of a quantity of fish that is expressed by a unit or units representing a percentage of the total allowable catch of a fishery. The IFQ may be received or held for exclusive use by an individual or company. The commonly-used term “individual transferable quota” would therefore mean a type of IFQ that is transferable. A CDQ is not a type

of IFQ and is not meant to be encompassed by the definition of “individual fishing quota”.

The term “Pacific Insular Area” would mean American Samoa, Guam, the Northern Mariana Islands and a number of other specific islands, reefs and atolls in the western Pacific Ocean.

Section 103 would amend existing definitions in section 3 for the terms “Continental Shelf fishery resources”, “large-scale driftnet fishing”, “Marine Fisheries Commission”, “optimum” (with respect to yield from a fishery), and “United States harvested fish”, and would add a new definition for “special areas” which was conditionally added to the Magnuson Act by the Act entitled “An Act to provide for the designation of the Flower Garden Banks National Marine Sanctuary” (P.L. 102–251). Section 103 would also make the following technical corrections to: (1) the listings of corals and crabs in the existing definition of “Continental Shelf fishery resources” consistent with current taxonomic nomenclature; (2) the measured length of gillnets in the definition of the term “large-scale driftnet fishing”, conforming it to the length measure used in the United Nations’ worldwide ban on driftnets; (3) a commission name in the definition of the term “Marine Fisheries Commission”; and (4) the definition of “United States harvested fish.”

Section 103 would amend the existing definition of “optimum” with respect to the yield from a fishery to mean the amount of fish prescribed on the basis of the maximum sustainable yield “as reduced” (replacing the phrase “as modified” in current law) by any relevant economic, social, or ecological factor. This change would prevent allowable catches from exceeding the maximum sustainable yield of a fishery, but is not meant to preclude the Secretary, the Councils and the scientific and statistical committees of the Councils from using other appropriate scientific measures of sustained yield where there are insufficient data to determine the maximum sustainable yield of a fishery.

Section 104.—Authorization of Appropriations

Section 104 would create a new section 4 of the Magnuson Act to authorize appropriations to the Secretary for the purposes of carrying out the Magnuson Act. The authorization of appropriations for previous years currently is contained in section 406 of the Magnuson Act, which would be replaced by amendments made in section 207 of the reported bill. The following amounts would be authorized in new section 4: \$147 million for FY 1996; \$151 million for FY 1997; \$155 million for FY 1998; \$159 million for FY 1999; and \$163 million for FY 2000. Not less than 10 percent of the appropriations authorized in each fiscal year would be required to be used for enforcement activities.

Section 105.—Highly Migratory Species

Section 105 would amend section 102 of the Magnuson Act to require the United States to promote the achievement of the optimum yield of highly migratory species in cooperating with other nations involved in highly migratory species fisheries. The language in this section of current law is taken directly from article 64 of the U.N. Convention on the Law of the Sea. The reported bill

would modify that language to make it consistent with the definitions used in the Magnuson Act.

Section 106.—Foreign Fishing and International Fishery Agreements

Section 106 includes provisions addressing: (1) international bycatch reduction agreements; (2) the period for Congressional review of governing international fishery agreements (GIFAs); (3) the issuance of permits to allow foreign vessels to transship fish within the EEZ; (4) fishery agreements allowing for foreign fishing in the EEZ of Pacific Insular Areas; and (5) the reduction of reporting requirements with respect to driftnet fishing.

Section 106(a) would make a conforming change to section 201(a)(1) of the Magnuson Act related to the issuance of transshipment permits to foreign vessels that would be authorized in new section 204(d) discussed below.

Section 106(b) would amend section 202 of the Magnuson Act adding a new subsection (h) to require the Secretary of State, in cooperation with the Secretary, to secure international agreements (if such agreements are necessary and appropriate) establishing standards and measures for bycatch reduction comparable to the standards and measures required of U.S. fishermen under the Magnuson Act. This provision is not intended to overburden the Secretary of State or to require negotiation of bycatch agreements for all transboundary fisheries. Rather, the Committee anticipates that such an agreement will be negotiated for fisheries in which: (1) a fishery stock that is shared with other nations must be reduced to conserve the stock, and (2) bycatch restrictions for such stocks are being considered for U.S. fishermen. International bycatch agreements would be required to be consistent with the policies and purposes of the Magnuson Act and approved by Congress in the same manner as GIFAs. The Secretary would be required to report to Congress annually on actions taken with respect to international bycatch agreements.

Section 106(c) would amend section 203 of the Magnuson Act to extend the time required for Congressional review of a GIFA from 60 days of continuous session of the Congress to 120 calendar days, not counting those days when Congress has adjourned sine die.

Section 106(d) would amend section 204 of the Magnuson Act by adding a new subsection (d) that deals with permits for foreign vessels to transship fish products in U.S. waters. The Secretary would be authorized to issue transshipment permits allowing foreign vessels to transport fish products at sea from within State waters or the EEZ to a point outside of the United States. The Secretary would be able to approve transshipment permit applications only with the concurrence of the appropriate Council and, among other things, if no owner or operator of a U.S. vessel with the capacity to perform the transportation indicated an interest in performing the transportation at fair and reasonable rates. The Secretary would be authorized to approve all or only a portion of an application, establish conditions and restrictions with regard to the permit, and collect a fee to recover the costs of issuing the permit.

Section 106(d) also would add a new subsection (e) to section 204 of the Magnuson Act authorizing Pacific Insular Area Fishing

Agreements (PIAFAs). Specifically, it would authorize the Secretary of State to negotiate and enter into a PIAFA at the request of, and with the concurrence of, the Governor of a Pacific Insular Area to allow foreign fishing within the EEZ adjacent to that Pacific Insular Area. The Western Pacific Council would act on behalf of Pacific Insular Areas for which there is no Governor.

PIAFAs: (1) would be required to provide for observer coverage; (2) would not be subject to provisions of section 201 of the Magnuson Act related to the calculation of total allowable levels of foreign fishing; (3) could not exceed three years in duration nor supersede any GIFA; and (4) could not be negotiated with a nation that is in violation of any GIFA. Fees collected under a PIAFA may be in excess of administrative costs and would be used for fishery conservation and management purposes in the Pacific Insular Area to which the agreement pertains.

Prior to entering into a PIAFA, the Governor of a Pacific Insular Area, in concurrence with the Western Pacific Council, would develop a three-year conservation and management plan for which funds generated from the agreement would be used. Funds could also be allocated for other marine and coastal-related uses but only after conservation and management costs have been met. The expenditure of funds generated by a PIAFA is intended to benefit the people and resources of these western Pacific areas and in doing so benefit the Nation.

Section 106(e) would amend section 205(a) of the Magnuson Act dealing with import prohibitions to require certification by the Secretary of State of any foreign nation that fails to enter into an international bycatch agreement. As amended, section 205 would require the Secretary of the Treasury, upon receipt of such a certification, to impose trade sanctions on fish and fish products from the foreign nation involved.

Section 106(f) would amend section 206(e) of the Magnuson Act on large-scale driftnet fishing to eliminate duplicative annual reporting requirements.

Section 107.—National Standards

Section 107 would amend section 301(a) of the Magnuson Act to modify and expand upon the national standards for conservation and management with which fishery management plans and regulations must be consistent. Section 107(a) would amend national standard five to require conservation and management measures, where practicable, to “consider” efficiency, rather than “promote” efficiency. In the past, this national standard has been used to, among other things, justify ecologically wasteful, but economically efficient practices such as roe stripping. The goal of this amendment is not to eliminate efficiency as a consideration in the development of plans and regulations, but rather to ensure that it is balanced with the requirements of other national standards.

Section 107(b) would add three new national standards at the end of section 301(a) of the Magnuson Act. New national standard eight would require that conservation and management measures take into account the importance of the harvest of fishery resources to minimize (to the extent practicable) adverse economic impacts on, and provide for the sustained participation of, fishing commu-

nities, but would prevent such measures from having an economic allocation as their sole purpose. This standard is not intended to constitute a basis for allocating resources to a specific fishing community or provide preferential treatment based on residence in a fishing community. As clearly stated in existing national standard four, conservation and management measures shall not discriminate between residents of different States, and any necessary allocation or assignment of fishing privileges must be fair and equitable to all fishermen. This standard also is not intended to be used as a basis for circumventing conservation requirements.

New national standard nine would require that conservation and management measures minimize, to the extent practicable, bycatch and the mortality of bycatch which cannot be avoided. The priority for reducing bycatch under the new standard would be to minimize or avoid catching bycatch species where possible. Fish that are bycatch and cannot be avoided should, to the extent practicable, be returned to the sea alive. The Committee anticipates that ecological interrelationships of fish species in the ecosystem will be an important consideration in determining the practicability of minimizing bycatch.

New national standard ten would require that conservation and management measures promote the safety of human life at sea. The Committee recognizes that commercial fishing is a difficult and sometimes hazardous occupation and encourages efforts to protect crew safety. However, the standard is not intended to give preference to one type of management system over another. To reiterate, existing national standard four states that conservation and management measures shall not discriminate between residents of different states, and any necessary allocation or assignment of fishing privileges must be fair and equitable to all fishermen. In addition, national standard five states that no conservation and management measure shall have an economic allocation as its sole purpose.

Section 108.—Regional Fishery Management Councils

Section 108 of the reported bill would amend section 302 of the Magnuson Act which establishes the eight Councils and procedures for their operation and administration. Section 108(a) would make a number of changes to the Council's makeup. With respect to the Mid-Atlantic Council, this section would add two positions for North Carolina to the Council membership increasing the number of voting members from 19 to 21 and increasing the number of members appointed by the Secretary from 12 to 13. The amendment, though, would not expand or change the geographical or ocean area for which the Mid-Atlantic Council has authority.

With respect to the Pacific Council, this section would increase the number of voting members from 13 to 14 and require the appointment of a voting member who represents an Indian tribe with Federally-recognized fishing rights from California, Oregon, Washington, or Idaho.

With respect to Atlantic highly migratory species (HMS), subsection 108(a)(7) would move the existing authority in section 304(f)(3) of the Magnuson Act (giving the Secretary management authority for such fisheries) to section 302(a). The language is iden-

tical to the provision in existing law and reasserts Secretarial authority to prepare and amend fishery management plans for all Atlantic HMS. The changes are linked to other organizational changes to the Magnuson Act in the reported bill and with establishment of advisory panels for Atlantic HMS fisheries.

Section 108(b) would amend section 302(b) of the Magnuson Act, establishing requirements for appointment of voting members of the Councils. This subsection of the reported bill would amend section 302(b)(3) of the Magnuson Act to clarify that Council members may serve for three full consecutive terms. The Magnuson Act currently limits Council members to three consecutive terms. However, it does not state clearly that a Council member may serve three “full” consecutive terms in addition to any partial term served by a Council member as a result of a vacancy which occurred prior to the expiration of a Council member’s term of office. The section also would add a new paragraph to section 302(b) of the Magnuson Act to establish the appointment process for the tribal member, and require that representation be rotated among tribes according to certain considerations. This section also would amend section 302(b) and would authorize the Secretary to remove for cause an appointed Council member who knowingly and willfully fails to disclose or falsely discloses a financial interest, or who knowingly votes on a Council decision that would have a significant and predictable positive effect on a financial interest of that member. This change does not affect the Secretary’s existing authority to remove a Council member if the Council concerned recommends removal by not less than a two-thirds vote.

Section 108(c) of the reported bill would amend section 302(d) of the Magnuson Act to clarify that NMFS regional directors and State officials are not eligible to receive Federal compensation for serving on the Councils. While States may designate as their representative on a Council individuals who are not State employees, the Magnuson Act is not intended to provide additional compensation to State and Federal employees. This section also would make a technical change requiring Council members who are compensated to be paid at the daily rate for General Schedule (GS) grade 15, step 7. The current rate identified in the Magnuson Act (GS–16) no longer exists, and the new rate of GS–15, step 7 is equivalent to this rate.

Section 108(d) of the reported bill would amend section 302(e) of the Magnuson Act to require that Councils hold a roll call vote at the request of any voting member, and that the minutes and records of each Council identify roll call votes and how each Council member voted.

Section 108(e) would amend section 302(g) of the Magnuson Act on Council advisory panels to require that the Secretary establish comparable groups to assist in the development of fishery management plans and plan amendments for Atlantic HMS fisheries like tuna, billfish, and sharks. This new requirement recognizes the need for greater representation and involvement of the industry and public interest groups in the decision-making process for Atlantic HMS fisheries. The advisory panels will allow increased openness and accountability in all aspects of the plan development process and ensure adequate participation by members of the pub-

lic with expertise in these fisheries. The advisory panels would be required to be balanced in providing representation for commercial and recreational fishing interests and to include knowledgeable individuals selected for their academic, scientific, and conservation experience. The Committee anticipates that the Secretary will consult with Commissioners of the International Commission for the Conservation of Atlantic Tunas (ICCAT) in selecting advisory panel members and give full consideration to members of the ICCAT advisory committee and species working groups. The Committee intends that the new authority provided by this subsection be used to establish a transparent public process for making fishery management decisions, comparable to the present Council process.

Section 108(f) of the reported bill would amend section 302(h) of the Magnuson Act, which deals with Council functions. This subsection would make a conforming amendment dealing with Atlantic HMS fisheries, and would authorize a Council to prepare comments on applications by foreign vessels to transport fish products within the Council's area of jurisdiction.

Subsection 108(g) would strike section 302(i) of the Magnuson Act, which addresses fishery habitat. The reported bill shifts provisions dealing with protection of fishery habitat to section 305 of the Magnuson Act.

Subsection 108(h) of the reported bill amends the provisions of section 302 of the Magnuson Act that address procedures for Councils and advisory panels. This subsection also would make a conforming amendment so that the existing requirements for advisory panels apply to, and would be used by advisory panels for Atlantic HMS fisheries. Such changes would ensure that: (1) the Federal Advisory Committee Act (FACA) does not apply to Atlantic HMS fisheries advisory panels, consistent with the FACA exemption for other advisory panels established under the Magnuson Act; and (2) requirements such as timely public notice applies to Atlantic HMS fisheries advisory panels.

This subsection of the reported bill also would prohibit the Councils from modifying the published agenda of a Council meeting without public notice or within 14 days prior to a Council meeting. The Committee intends the term "modifying" to mean adding significant items to the agenda, such as items that require final Council action. The Committee does not intend to prevent Councils from dropping items not yet ready to be addressed, making routine changes to an agenda, or allowing for additional testimony. In addition, this subsection would require written data submitted at Council meetings to include a statement of the source and date, and would require oral and written statements submitted at meetings to include a brief description of the background and interests of the person in the subject of the statement. Finally, this subsection addresses the requirement for Councils to keep detailed minutes of Council meetings.

Section 108(i) would amend section 302 of the Magnuson Act dealing with a Council member's disclosure of financial interests. The subsection would add a requirement that a Council member recuse himself or herself from voting on any Council decision which would have a significant and predictable effect on a financial interest held by the Council member, the Council member's spouse,

minor child, or partner, and any organization (other than the Council) in which the Council member is serving as an officer, director, trustee, partner, or employee. A Council decision would be considered to have a significant and predictable effect on a financial interest if there is a close causal link between the Council decision and an expected and disproportionate benefit, shared only by a minority of persons within the same fishery and gear type, to the financial interest. This is intended to prevent Council members from voting on decisions that would bring financial benefits only to themselves or a minority in their gear type and fishery, but not to restrict unnecessarily a Council member's participation in votes and deliberations on most matters.

The Secretary would be required, with the concurrence of each Council, to designate an official to attend Council meetings and make determinations for the record whether a Council decision would have a significant and predictable effect on a financial interest. Determinations could be made at the discretion of the designated official or at the request of the Council member whose financial interest might be affected by a Council decision.

Council members could appeal a determination by the designated official by submitting a written request to the Secretary within 10 days of the determination. The Secretary would be required to review any appeals within 30 days. The Secretary's ruling on an appeal would not be treated as a cause for invalidating or reconsidering a Council decision which was made prior to the ruling.

A Council member who did not vote would be required to state for the record how he or she would have voted, allowing the Councils to assess, if a determination is reversed on appeal, whether the determination affected the outcome of a vote. The Committee anticipates that a Council could choose to vote again at a subsequent meeting if the Secretary's reversal would change the outcome of a vote. However, in some cases a Council might choose not to vote again on the matter, if the process would cause delays or disruptions which could adversely affect conservation and management of the fishery involved. The Secretary in consultation with the Councils would be required to establish regulations for the new recusal requirements within one year of the date of enactment of the reported bill.

Section 109.—Fishery Management Plans

Section 109(a) of the reported bill would amend section 303(a) of the Magnuson Act by adding a number of new provisions to the requirements of fishery management plans and plan amendments. This subsection would amend existing paragraph (7) and require all fishery management plans and plan amendments to: (1) describe and identify essential fish habitat; (2) minimize, where practicable, adverse effects on essential fish habitat caused by fishing; and (3) identify other actions which should be considered to encourage the conservation and enhancement of essential fish habitat. This subsection also would amend existing section 303(a)(9) of the Magnuson Act, which requires a fishery impact statement for each fishery management plan or plan amendment. The change would impose a new requirement that such statements assess, specify, and describe the likely effects of the plan or amendment on fishing

communities. Finally, this subsection would expand the required provisions of fishery management plans to require that each plan: (1) specifies criteria to identify a fishery as overfished and contains measures to rebuild a fishery that is overfished or approaching an overfished condition; (2) assesses the level of bycatch occurring in a fishery and, to the extent practicable, includes measures to minimize bycatch and minimize the mortality of bycatch that cannot be avoided; (3) assesses the amount and type of fish caught during recreational fishing and, to the extent practicable, includes measures to minimize the mortality of fish caught and released that are the target species of catch-and-release recreational fishing programs; and (4) takes into account the safety of human life at sea.

Section 109(b) requires, within 18 months of the date of enactment of the reported bill, each Council to submit amendments to ensure that the fishery management plans under its jurisdiction comply with amendments made by section 109(a) of the reported bill.

Section 109(c) of the reported bill would amend section 303(b) of the Magnuson Act by making several changes to the discretionary provisions that may be used in fishery management plans. The subsection would amend section 303(b)(6) to require the Councils and Secretary to take into account the cultural and social framework relevant to fishing communities in developing limited access systems and make a technical clarification to the term “limited access system”. The subsection also would clarify that one or more observers may be required on board a vessel of the United States to collect data necessary for the conservation and management of a fishery. The subsection would explicitly authorize the use in fishery management plans of harvest incentives for participants within each gear group of a fishery whose fishing practices result in lower levels of bycatch. Should a Council elect to use this authority, the Committee anticipates that the Secretary would assist the Council in developing measures to address any Constitutional due process issues that may exist.

Section 109(d) of the reported bill would amend section 303(c) of the Magnuson Act to allow the Councils to submit proposed regulations to implement a fishery management plan or plan amendment either simultaneously with the plan or plan amendment, or at any time after the plan or amendment is approved. As currently written, the Magnuson Act does not provide a clear timetable or process for review of regulations submitted by a Council after a plan or plan amendment has been approved. In recent years, Councils have increased their use of framework fishery management plans that rely on regulations to establish fishery parameters like season openings and closures, allowable catches, and allocations of harvests among sectors of a fishery. Because such a “regulatory amendment” is submitted after a framework management plan is approved, the Secretary has no statutory deadlines for its approval and this process often has taken several months. Consequently, fishermen and the involved Council may be left without final approval of operating parameters of a fishery (including any changes to the regulatory amendment by the Secretary) until the fishery is scheduled to open. This subsection, along with the changes made in section 110 of the reported bill would establish streamlined pro-

cedures for consideration and approval of all regulations submitted by a Council to the Secretary.

Section 109(e) would amend section 303 of the Magnuson Act to add a new subsection addressing limited access systems that use IFQs. This subsection would delete existing subsections (d), (e), and (f) of section 303 of the Magnuson Act, which deal with the confidentiality of statistics, data collection programs, and restrictions on the use of certain data, respectively. These provisions would be revised and added to a new section 402 of the Magnuson Act specifically addressing data collection.

With respect to IFQs, new section 303(d) of the Magnuson Act would prohibit the Councils from submitting, or the Secretary from approving or implementing, any fishery management plan, plan amendment, or regulation under the Magnuson Act which creates a new IFQ program prior to September 30, 2000. Any plan, plan amendment, or regulation creating any new IFQ program which was approved on or after January 4, 1995 (the date on which bills that specifically addressed IFQs were introduced in the Senate and House of Representatives) would be repealed and could not be re-submitted, approved or implemented prior to September 30, 2000. The only program the Committee is aware of that would be repealed under this provision is the Gulf of Mexico red snapper IFQ program.

The new subsection would clarify that: (1) no provision of law may be used to limit the authority of a Council to submit and the Secretary to approve and implement a fishery management plan, plan amendment, or regulation which terminates or limits a limited access system, including an IFQ system, without compensation to any holders of limited access system permits; (2) the provisions of the new IFQ subsection of the Magnuson Act should not be construed to prevent a Council from submitting and the Secretary from approving and implementing amendments to the three existing IFQ programs that were approved prior to January 4, 1995; and (3) IFQs should be considered permits for the purposes of the existing sections of the Magnuson Act addressing prohibited acts, civil penalties and permit sanctions, and criminal offenses.

Under new Magnuson Act section 303(d) each Council would be authorized to recommend that up to 25 percent of any IFQ or CDQ fees collected in a fishery under its jurisdiction be used to guarantee loans for the purchase of IFQs by small vessel fishermen and by entry level fishermen purchasing IFQs for the first time. Each Council would establish the qualifying criteria for guarantees and decide how much of the 25 percent would be allocated for small vessel IFQ guarantees and how much would be allocated for entry level IFQ guarantees. It would be up to each Council (except as provided for the North Pacific Council in section 109(g) of the reported bill) to define "fishermen who fish from small vessels" and "entry level fishermen" for the purposes of implementing an IFQ loan guarantee program. The Committee encourages each Council to consider appropriate factors, such as those listed for consideration in developing a limited access system, in defining these terms in order to provide adequate entry opportunity in the IFQ fishery.

Section 109(f) of the reported bill would require the Secretary, in consultation with the Councils and the National Academy of

Sciences, to submit a comprehensive IFQ report to Congress by June 1, 1999 that includes proposed amendments to the Magnuson Act to implement a national policy with respect to IFQs. This subsection would mandate that the report address all relevant aspects of IFQs, including assessing the impacts and advisability of a number of specific listed variables. In addition, the report would include a detailed analysis of the three IFQ programs already implemented in the United States, and any information about IFQ programs in other countries that may be useful. The report also would identify alternatives to IFQ programs, as well as characteristics that are unique to IFQ programs. To assist in the preparation of the report the Secretary would be required to establish two IFQ review groups with a balanced representation of views and to conduct public hearings in each Council region to obtain comments. Finally, in the event that Congress has not yet enacted amendments to the Magnuson Act to implement a national IFQ policy by September 30, 2000, this subsection would allow the Councils to submit and the Secretary to approve and implement an IFQ program after that date if the Council approves the program by a two-thirds vote. The two-thirds vote requirement is intended to provide for cautious action by any Council which submits an IFQ program in the absence of a national policy, particularly because plan amendments may be required to achieve consistency with any national policy established subsequent to plan approval. The Committee anticipates that the two-thirds vote requirement will not be necessary after the Congress passes amendments to the Magnuson Act to implement a national IFQ policy and consequently the requirement would be repealed at that time.

Section 109(g) of the reported bill would require the North Pacific Council to submit a proposed small vessel and entry level IFQ loan guarantee program by January 1, 1997 that uses the full amount authorized (25 percent) from IFQ fees that would be charged in the halibut and sablefish fisheries.

Section 110.—Action by the Secretary

Section 110 would amend section 304 of the Magnuson Act relating to the responsibilities of the Secretary for fishery management plans. Subsection (a) would streamline and improve the process by which the Secretary reviews and approves fishery management plans, plan amendments and regulations submitted by the Councils. This section of the reported bill also would provide for the collection of IFQ and CDQ fees, add provisions to address the problem of overfishing, amend existing requirements for the Secretary's management of Atlantic HMS fisheries, and create a new subsection for the review of fishery management plans prepared by the Secretary.

First, section 110(a) would revise review procedures by eliminating the preliminary evaluation by the Secretary of fishery management plans and plan amendments currently required by section 304(a)(1)(A) of the Magnuson Act. This preliminary evaluation is duplicative of the broader evaluation required and provides little benefit in the review process. Transmittal of a plan or amendment by a Council would continue to trigger an immediate review by the Secretary and a 60-day public comment period on the plan or

amendment. The Secretary would continue to be required to approve, disapprove or partially approve a plan or amendment within 30 days after completion of the public comment period.

Second, section 110(a) would eliminate the Magnuson Act provision which currently states that a plan or plan amendment shall take effect if the Secretary does not notify the Council in writing of disapproval or partial disapproval within 30 days of the end of the public comment period, or upon notification of the Council that the Secretary does not intend to disapprove or partially disapprove a plan or amendment. The current provision was intended to prevent delays by the Secretary in the approval of plans and amendments. As a practical matter, however, plans and amendments cannot become effective without action by the Secretary. The proposed changes would not eliminate the time requirements the Secretary must meet in reviewing and taking action on plans and amendments submitted by the Councils.

Third, section 110(a) would allow Councils to submit a revised plan or amendment in the same manner as the original plan or amendment, thereby allowing portions of section 304(a) of the Magnuson Act, which deal separately with the review of revised plans and amendments, to be eliminated.

Fourth, section 110(a) would establish a separate review process for regulations in section 304(b) of the Magnuson Act. This new process would expedite the implementation of regulations, and complement the authority to be provided by section 109(d) of the reported bill to allow the Councils to submit regulations with a plan or amendment or after a plan or amendment has been approved. Under this process, the Secretary would be required to determine within 15 days whether proposed regulations transmitted by the Councils are consistent with the fishery management plan, plan amendment, the Magnuson Act, and other applicable law. If they are consistent, the Secretary would be required to publish the regulations in the Federal Register for between 15 and 60 days for public comment. Within 30 days after the end of this comment period, the Secretary would be required to promulgate final regulations. If the Secretary determines that proposed regulations are not consistent, the Secretary would be required to notify a Council in writing, and the Council would be allowed to submit revised proposed regulations.

Section 110(b) would amend provisions relating to the preparation of a fishery management plan by the Secretary making a number of conforming amendments necessitated by other changes in the reported bill. These changes would consolidate the review process for all plans and amendments prepared by the Secretary into one subsection. This subsection also would amend section 304(c)(3) of the Magnuson Act to clarify that the Secretary may establish limited access systems for Atlantic HMS fisheries. The clarification would not change existing law which prevents the Secretary from establishing any limited access system without the approval of a majority of the voting members of an appropriate Council. The subsection also would clarify that IFQ systems are limited access systems.

Section 110(c) of the reported bill would amend section 304(d) of the Magnuson Act to require that the Secretary collect a fee of up

to three percent of the annual ex-vessel value of fish harvested under any IFQ program or CDQ program for the purpose of recovering the costs directly related to the management and enforcement of such programs. Section 110(d) would prohibit the Secretary from beginning to collect fees in the surf clam/ocean quahog and wreckfish IFQ fisheries until January 1, 2000.

Section 110(e) of the reported bill would amend section 304(e) of the Magnuson Act, revising the subsection to address the problem of overfishing. Existing fisheries research provisions in section 304(e) would be added to the Magnuson Act as a new section 404 by section 205 of the reported bill. Under revised section 304(e), the Secretary would be required to report annually to Congress and the Councils on the status of fisheries and to identify fisheries that are overfished or approaching a condition of being overfished. The Secretary would be required to notify immediately the appropriate Council upon determining that a fishery is overfished. A Council (or the Secretary, where practicable, with respect to Atlantic HMS fisheries) would be required to prepare a plan, plan amendment or regulations within one year to end overfishing, rebuild affected stocks of fish, and prevent overfishing from occurring in fisheries approaching that condition. The plan, amendment or regulation would be required to specify a time period for ending overfishing and rebuilding the fishery that could not exceed 10 years, except where the biology or the stock of fish or environmental conditions prevent this maximum time frame from being met.

This subsection of the reported bill also would amend the Magnuson Act to require the Secretary to prepare a fishery management plan or amendment to stop overfishing and rebuild affected stocks if a Council does not submit a plan, amendment or regulations within one year of being notified that a fishery is overfished. The Councils could request the Secretary to implement interim measures to reduce overfishing during the development of a plan, amendment or regulations. The Secretary would be required to review plans, amendments and regulations designed to end overfishing and rebuild affected fish stocks at least every two years. If the Secretary finds that adequate progress towards rebuilding the fishery has not resulted, the Secretary would be required to immediately make necessary revisions to achieve adequate progress in Atlantic HMS fisheries, and would be required to immediately notify the appropriate Council with respect to all other fisheries.

Section 110(f) of the reported bill would amend section 304(f) of the Magnuson Act by striking the paragraph relating to authority for the management of Atlantic HMS fisheries in conformance with the proposed relocation of this authority in sections 302(a) and 304(a) of the Magnuson Act.

Section 110(g) would amend section 304(g) of the Magnuson Act by striking existing language and inserting provisions relating to the management of Atlantic HMS fisheries. The existing language (relating to incidental harvests in the Gulf of Mexico) would be amended and added as a new section 405 of the Magnuson Act by section 206 of the reported bill. The new Magnuson Act provisions that would be added as section 304(g) are similar to existing provisions in section 304(f)(3) of the Magnuson Act.

Specifically, new section 304(g) of the Magnuson Act would require the Secretary to prepare a fishery management plan or amendment for any Atlantic HMS fishery that requires conservation and management. In preparing and implementing a plan or amendment, the Secretary would be required to, among other things: (1) conduct public hearings; (2) consult with the Secretary of State, Coast Guard, affected Councils, U.S. ICCAT commissioners and ICCAT advisory groups, and advisory panels for Atlantic HMS fisheries; (3) establish an Atlantic HMS fisheries panel for each fishery management plan; (4) minimize any disadvantages of U.S. fishermen in relation to foreign fishermen; and (5) provide U.S. fishing vessels with a reasonable opportunity to harvest any fish which the United States is authorized to harvest under an international fishery agreement. With respect to the requirement to minimize discarding, this subsection is not intended to affect the present no-sale status of billfish in Federal regulations implementing the Billfish Fishery Management Plan.

Section 110(h) would add a new subsection to section 304 of the Magnuson Act, consolidating the review process for all fishery management plans, plan amendments and regulations prepared by the Secretary into a new subsection (h). Plans and amendments prepared by the Secretary in fisheries where the appropriate Council failed to submit a plan or amendment needed for conservation and management would continue to be reviewed in the same way as under existing section 304(c)(2) of the Magnuson Act, including plans and amendments developed by the Secretary to stop overfishing and rebuild affected fish stocks in cases where a Council has failed to take action. Plans and amendments developed by the Secretary for Atlantic HMS fisheries would follow similar procedures, except that they would not be required to be submitted for consideration and comment by Councils since the Secretary has jurisdiction. The public comment period on any proposed regulations for a plan or amendment prepared by the Secretary would be required to be 60 days, except for minor revisions to existing regulations. Final regulations for plans and amendments prepared by the Secretary would be required to be promulgated within 30 days of the end of the 60-day comment period.

Section 111.—Other Requirements and Authority

Section 111 of the reported bill would amend section 305 of the Magnuson Act to require greater oversight of gear used in fisheries, improve existing requirements for the protection of fish habitat, improve existing emergency regulatory authority, provide new authority to create fishery negotiation panels, and require the establishment of a central registry system for all limited access system permits.

Section 111(a) of the reported bill would retitle section 305 of the Magnuson Act and strike existing section 305(a), which deals with the promulgation of regulations by the Secretary. Regulations for plans and amendments developed by the Secretary would be reviewed and finalized in accordance with new section 304(h) of the Magnuson Act (as amended by section 110(h) of the reported bill), and regulations for plans and amendments developed by Councils would be reviewed and approved under section 304(b) (as amended

by section 110(a) of the reported bill), so existing section 305(a) would no longer be needed. This subsection of the reported bill also would redesignate existing section 305(b), which provides for the judicial review of regulations, as section 305(f), and would add two new subsections to the beginning of section 305.

New section 305(a) would require the Secretary to compile and publish in the Federal Register a list of all fisheries and fishing gear used in each fishery, using information already required to be submitted by the Councils as part of the required provisions of fishery management plans, and using information currently available to the Secretary with respect to Atlantic HMS fisheries. Effective 180 days after the list is published, no person or vessel would be allowed to use fishing gear or engage in a fishery not on the list without first giving 90 days advance written notice to the appropriate Council, or Secretary with respect to Atlantic HMS fisheries. This is intended to prevent new and potentially damaging gear that may be used, or fisheries that may be conducted, from occurring without the prior knowledge of the Councils or Secretary. The subsection is not intended to require notification for reasonable gear or fishery modifications made by fishermen routinely to improve operations or adjust to conditions in the fishery. The Secretary is required to include guidelines with the list of fisheries and gear that can be used to determine when fishing gear or a fishery is sufficiently different from the list to require notification. A Council could submit proposed changes it deems appropriate to the Secretary at any time, and the Secretary would be required to publish a revised list, after notice and comment, upon receiving proposed changes from a Council.

In the event that a Council determines that an unlisted gear or fishery would compromise the effectiveness of conservation and management efforts, the Council would request the Secretary to promulgate emergency regulations to prevent persons and vessels from using the unlisted gear or engaging in the unlisted fishery. The emergency regulations would allow the Council to prepare and submit appropriate fishery management plans, amendments, or regulations necessary to permanently address the conservation or management concern. The Secretary would be authorized to promulgate emergency regulations with respect to unlisted gear and fisheries in Atlantic HMS fisheries.

New section 305(b) of the Magnuson Act would revise and expand existing provisions to protect fish habitat that have been shifted from their current position in section 302(i) of the Magnuson Act. Under the revised provisions, the Secretary would be required to establish guidelines within six months of the enactment of the reported bill to assist the Councils in describing and identifying essential fish habitat and actions which should be considered to ensure the conservation and enhancement of such habitat, a new requirement in each fishery management plan. The Secretary also would provide recommendations and information to assist the Councils, review Department of Commerce programs, and coordinate with and provide information to other Federal agencies to ensure and further the conservation and enhancement of essential fish habitat. Other Federal agencies would be required to consult with the Secretary with respect to actions taken that may ad-

versely affect essential fish habitat identified under the Magnuson Act.

Consistent with the existing provisions of the Magnuson Act, the Councils would continue to be authorized to comment on Federal and State activities that might affect the habitat of a fishery resource, and would continue to be required to comment on Federal and State activities likely to substantially affect the habitat of an anadromous fishery resource. Upon receiving information that a Federal or State agency's action would adversely affect essential fish habitat, the Secretary would be required to recommend measures to the agency for conserving the habitat. A Federal agency would be required to provide a detailed written response to the Secretary within 30 days, describing measures being considered to avoid, mitigate, or offset the impact of the activity, or explaining its reasons for not following the Secretary's recommendations.

Section 111(b) of the reported bill would amend section 305(c) of the Magnuson Act to extend the maximum initial period for emergency regulations from 90 days to 180 days. Emergency regulations could be extended for an additional period of 180 rather than 90 days, as well. This subsection also would add a new subparagraph to section 305(c) of the Magnuson Act to allow emergency regulations which respond to public health emergencies to remain in effect for longer than the established periods if: (1) the circumstances which created the emergency continue to exist; (2) the Secretary of Health and Human Services concurs with the Secretary's actions; and (3) the public has had an opportunity to comment after the regulations are published.

Section 111(c) of the reported bill makes a technical change to section 305(e) of the Magnuson Act to update the number of an Executive Order with which the Secretary must comply.

Section 111(d) of the reported bill would add two new subsections to the end of section 305 of the Magnuson Act to provide authority for fishery negotiation panels, and to require the creation of a central lien registry for limited access system permits. New section 305(g) of the Magnuson Act would allow a Council or the Secretary to establish a fishery negotiation panel to assist in the development of specific conservation and management measures for a fishery. The Secretary, in cooperation with the Administrative Conference of the United States, would be required to establish procedures for fishery negotiation panels comparable to the procedures for negotiated rulemaking in subchapter III of chapter 5 of title 5, U.S. Code. The recommendations of a fishery negotiation panel would be required to be contained in a report which would be published in the Federal Register for public comment. Neither a Council nor the Secretary would be required to follow the recommendations of a fishery negotiation panel, but it is expected that the Council and Secretary would carefully consider all such recommendations.

New section 305(h) of the Magnuson Act would require the Secretary to establish an exclusive central registry system for limited access system permits established under the Magnuson Act or other Federal law. The registry system would be required to be established within six months of the enactment of the reported bill. Many participants in limited access system fisheries use permits as loan collateral to finance the acquisition of the permit itself or to

otherwise finance their operations. While loans for vessels can be secured with a preferred ship mortgage filed in a central registry administered by the Coast Guard under chapter 313 of title 46 of the United States Code, currently there is no comparable mechanism for limited access system permits, an increasingly important component of fisheries conservation and management. New section 305(h) would establish a registry system for limited access system permits intended to be the exclusive means of perfecting security against third parties without notice. The registry system should reduce the risk that security granted by a permit holder will be encumbered by someone else, and reduce the transaction costs associated with financing limited access system permits. The registry system would be exclusive and administered centrally, thereby eliminating the uncertainty presently facing lenders and other secured parties as to the appropriate jurisdiction in which to file. However, the Committee anticipates that the system would be administered on a regional basis, within the region where the particular fishery management plan has been developed, to increase convenience and to eliminate the need to file in multiple jurisdictions or regularly check filings. The registry system would be required to allow for the registration of title to, and interests in, limited access permits, as well provide procedures for changes in the registration of title to such permits upon the occurrence of involuntary transfers, judicial or nonjudicial foreclosures of interest and the enforcement of judgments on interests. The Committee intends that the Secretary rely on other applicable law, including the Uniform Commercial Code, with respect to matters not provided for by new section 305(h), in creating the registry system. Finally, the new subsection would authorize the Secretary to collect a fee of not more than one-half of one percent of the value of a limited access system permit upon registration and transfer to recover the costs of administering the registry system.

Section 111(e) of the reported bill would provide for the transition to the new registry system, requiring secured parties to submit evidence of perfection in a security to the Secretary within 120 days of the final regulations implementing the registry system in order for the perfected interest to remain perfected and effective.

Section 112.—Pacific Community Fisheries

Section 112 would add a new section 305(i) to the Magnuson Act to establish criteria and procedures for CDQ programs. Section 112 of the reported bill also authorizes grants for western Pacific community demonstration projects. The Magnuson Act was enacted to phase out foreign fishing in the U.S. EEZ and when necessary to allocate the resulting fishing opportunities to U.S. fishermen in a manner that would be “fair and equitable to all such fishermen”. New subsection (i) is intended to ensure that western Alaska and western Pacific fishermen who historically fished in the U.S. EEZ are treated fairly and equitably as intended under the Magnuson Act.

Between 1976 and 1992, the Eskimo, Aleut and Indian fishermen who resided in Alaska villages along the Bering Sea coast, from Norton Sound to the north side of the Aleutian Islands and including the Pribilof Islands, were not afforded fair and equitable com-

mercial fishing opportunities in the Bering Sea. While fishermen from these communities historically had fished in the Bering Sea for commercial and subsistence purposes, they did not have a fair and equitable opportunity to benefit as the Bering Sea commercial fisheries were “Americanized” because they lacked the significant capital investment needed to participate in the fisheries.

In 1989, Bering Sea fishermen and residents, including Harold Sparck, a long-time resident and leader in western Alaska, brought this matter to the North Pacific Council’s attention. At the January 1990 meeting of the North Pacific Council, a member of the North Pacific Council from the state of Washington moved to include CDQs in the analysis of the allocation scheme being considered for the Bering Sea/Aleutian Islands pollock fishery. The motion carried without objection.

After thorough review and public comment, the North Pacific Council adopted a pollock CDQ program in 1991 as part of the pollock fishery inshore/offshore allocation program that passed by a final vote of nine to two. Under this program, 7.5 percent of the annual total allowable catch of Bering Sea pollock is allocated to villages that participate in a western Alaska CDQ program. In 1991, the Council also approved (by a final vote of seven to four, with the NMFS regional director and one member from Alaska voting against, and two members from Washington voting in favor) a halibut and sablefish IFQ program that established a second western Alaska CDQ program under which percentages of the annual total allowable catch of Bering Sea halibut and sablefish are allocated to villages that participate in the program.

In 1993, a lawsuit was filed against the halibut and sablefish program by the Alliance Against IFQs. As an ancillary claim, the Alliance’s complaint alleged that the Magnuson Act did not authorize the North Pacific Council to establish the halibut and sablefish CDQ program because the implementation of the program would violate Magnuson Act national standards four and five. In December of 1994, the United States District Court for the District of Alaska rejected this contention, determining that the Magnuson Act delegated the North Pacific Council authority to establish the program and that implementation of the program does not violate provisions of the Magnuson Act.

In June of 1995, the North Pacific Council renewed the pollock CDQ program by unanimous consent (with one abstention). The Council also voted at the meeting (by a vote of eight to two) to allocate 7.5 percent of the total allowable catch of Bering Sea crab to a western Alaska CDQ program, and (by a vote of seven to three, with the NMFS regional director voting against, one member from Washington voting in favor, and one abstention) to allocate 7.5 percent of the total allowable catch of groundfish to a western Alaska CDQ program.

By June of 1995, therefore, the North Pacific Council had recommended allocations to western Alaska CDQ programs for pollock, halibut, sablefish, crab and groundfish—the principal commercially important Bering Sea fishery resources. The Committee notes that these CDQ allocations were supported by North Pacific Council members from Alaska, Washington and Oregon, and that none of the CDQ allocations was recommended by the Council

without the support of one or more North Pacific Council members from Washington or Oregon. New section 305(i) of the Magnuson Act would explicitly provide for the western Alaska CDQ programs and combine them in a single program for regulatory efficiency.

While the North Pacific Council has taken action to begin to provide the opportunities envisioned by the Magnuson Act for fishermen in western Alaska communities, the Western Pacific Council has not yet taken such action with respect to fishermen from western Pacific communities. These fishermen, like the Alaska fishermen, have historically participated in western Pacific fisheries, but have had increasing difficulty in maintaining their participation as the fisheries have changed since enactment of the Magnuson Act. New section 305(i) would authorize the Western Pacific Council to use CDQs and other authority to ensure that western Pacific community fishermen have a fair opportunity to participate in western Pacific fisheries.

CDQ programs would contribute to the development of local economies and markets, the social and economic well-being of participants through enhanced self-sufficiency, and improvements in local infrastructures. Testimony presented to the Committee also indicated that western Alaska CDQ programs have provided millions of dollars in direct economic benefits to the fishermen and vessel owners who are partners with CDQ organizations in harvesting these fishery quotas.

New subsection (i) of section 305 of the Magnuson Act would require the North Pacific Council and the Secretary to establish a western Alaska community development program under which a percentage of the total allowable catch of each Bering Sea fishery is allocated to the program. Bering Sea CDQ programs already recommended or submitted by the North Pacific Council would be combined into a single, more efficient western Alaska CDQ program. The subsection also would establish community eligibility criteria that are based upon those previously developed by the North Pacific Council and Secretary, limiting such eligibility to those villages, including Akutan, that presently participate in the pollock and halibut/sablefish CDQ programs.

This subsection would establish a moratorium through FY 2000 on the submission by the North Pacific Council of a fishery management plan, amendment or regulation to provide a percentage of a Bering Sea fishery for the western Alaska CDQ program unless the Council had recommended a CDQ allocation in the fishery prior to October 1, 1995. The moratorium therefore would limit the new combined western Alaska CDQ program to the pollock, halibut, sablefish, crab and groundfish fisheries until September 30, 2000. In addition the Secretary would be prohibited during that period from approving or implementing a greater percentage of the total allowable catch of the Bering Sea pollock, halibut, sablefish, crab or groundfish fisheries for the western Alaska CDQ program than the North Pacific Council had already recommended as of September 30, 1995 in those fisheries. The effect of this restriction with respect to pollock would be that North Pacific Council and Secretary would be required to continue to allocate a percentage of pollock to the western Alaska CDQ program, notwithstanding the current expiration date for pollock CDQs, but the Secretary would not be al-

lowed to approve a percentage higher than 7.5 percent for pollock CDQs prior to October 1, 2000.

New section 305(i) also would require the Secretary to reduce the amount of any fees collected for fish harvested under the western Alaska CDQ program by an amount equal to the amount of costs incurred by a person for compliance with observer or reporting requirements tied to participation in the CDQ program. The actual amount of fees collected is not intended to exceed the costs associated with managing the CDQ program, as lowered by this reduction. The new combined western Alaska CDQ program would continue to be administered by the Secretary and the State of Alaska, and a portion of the fees collected by the Secretary are expected to be passed to the State of Alaska for reimbursement of costs directly related to management of the program.

With respect to the western Pacific, section 305(i) would authorize the Western Pacific Council to submit, and the Secretary to approve, a western Pacific community development program that allocates a percentage of the total catch of any fishery, limited entry permits, or other quotas related to vessel size and fishing zones, to western Pacific communities that participate in the program. The Committee recognizes that the Western Pacific Council may design a community development quota that is not identical to the western Alaska program, and therefore has broadened the types of allocations that the Western Pacific Council may consider. This subsection also would establish eligibility criteria for western Pacific communities wishing to participate in the program that are patterned loosely after the western Alaska criteria. The term "western Pacific community" would be defined to mean a community in the area or on an island within the area of jurisdiction of the Western Pacific Council, a majority of whose inhabitants are descended from the aboriginal peoples indigenous to the area, and in which traditional fishing practices are or have been historically used for subsistence or commercial purposes. In addition, this new subsection would require the Western Pacific Council to take into account traditional indigenous fishing practices in preparing any fishery management plan, plan amendment or regulation. Finally, after the date of enactment of the reported bill, Councils would be prohibited from proposing community development quota programs except as provided in this subsection.

Section 112(b) of the reported bill would authorize appropriations of up to \$500,000 annually for the Secretary and Secretary of Interior to make direct grants to eligible western Pacific communities to establish fishery demonstration projects that foster and promote traditional indigenous fishing practices. The Western Pacific Council would be required to establish an advisory panel to review and annually rank grant applications, and the Secretary and Secretary of Interior would be required to provide a detailed written explanation if the advisory panel's recommendations are not followed. The Western Pacific Council would be required to report annually to Congress on the status and progress of the demonstration projects, and appropriate Federal agencies would be authorized to provide technical assistance in carrying out the demonstration projects.

Section 113.—State Jurisdiction

Section 113 would make several changes to section 306 of the Magnuson Act, dealing with Federal and State jurisdictional matters. Subsection (a) of this section would revise section 306(a) of the Magnuson Act to clarify that a State may regulate a fishing vessel registered under its laws outside its boundaries if there is no Federal fishery management plan in place for a fishery, or if the State's laws are consistent with a Federal fishery management plan in place for a fishery. Vessels would be considered registered under the law of a State if: (1) the owner, captain or vessel holds a fishing license or other document issued by the State that is a prerequisite to participating in the fishery; (2) the vessel is numbered in the State; or (3) the vessel's Federal documentation lists as a homeport a location within the State. Existing section 306(a)(3) of the Magnuson Act is somewhat vague with respect to a State's authority to regulate its vessels and has been the subject of recent court challenges. Section 113(a) is intended to clarify the intent of section 306(a)(3) to allow a State to apply State regulations to fishing vessels registered in that State.

Subsection (b) of this section of the reported bill would amend section 306(b) to allow the State of Alaska to enforce its fishing laws and regulations in fisheries in the EEZ off Alaska in cases where no Federal fishery management plan exists or where the North Pacific Council has delegated management authority to the State through a fishery management plan, provided there is a legitimate State interest in the conservation and management of the fishery. Fisheries currently managed pursuant to a Federal fishery management plan could not be placed under State authority without the unanimous consent (except for the NMFS regional director) of the North Pacific Council. The provision would not require the unanimous consent of the North Pacific Council to continue to delegate management authority to the State of Alaska through fishery management plans for crab, salmon or in other fisheries in which the State of Alaska has been, or has been recommended to be, delegated such authority.

Section 113(c) would amend Magnuson Act section 306(c) to require foreign vessels to submit reports on the amount of fish received from U.S. vessels and the locations from which the fish were harvested in order to engage in processing fish within the State internal waters.

Section 114.—Prohibited Acts

This section would make a number of changes to actions prohibited under the Magnuson Act. Section 114(a) of the reported bill would amend section 307(1)(J) of the Magnuson Act to make it unlawful to ship, transport, offer for sale, sell, or purchase, in interstate or foreign commerce, any whole live lobster of the species *Homarus americanus* that is smaller than the minimum possession size in effect under the Atlantic Commission's American Lobster Fishery Management Plan if there is no Federal fishery management plan for the fishery. If the Atlantic Commission plan is withdrawn, the minimum size in effect at the time the plan was withdrawn would remain in effect until a new plan which contains a new minimum possession size goes into effect.

Section 114(b) would amend section 307(1)(K) of the Magnuson Act to make it unlawful for any person to steal or to negligently and without authorization remove or tamper with fishing gear owned by someone else or fish contained in the fishing gear. The amendment would establish a negligence standard for removing, damaging, or tampering with someone else's fishing gear or fish in the gear in the EEZ without their authorization.

Section 114(c) would expand the existing list of prohibited acts with respect to observers to explicitly include sexual harassment, and would make it unlawful for any person to commit these acts against data collectors employed by the NMFS or under contract to carry out responsibilities under the Magnuson Act.

Section 114(d) would make it unlawful for Council members to knowingly and willfully fail to disclose or falsely disclose any financial interest required to be disclosed under the Magnuson Act, or to knowingly vote on a Council decision in violation of the recusal requirement that would be added to the Magnuson Act by section 108(i) of the reported bill.

Section 114(e) would make conforming amendments so that certain activities involving fish processing and the transshipment of fish within the boundaries of States by foreign vessels are not considered an unlawful act. Both processing and transshipment activities are or would be authorized under the Magnuson Act.

Section 114(f) would make a conforming change to section 307(2)(B) of the Magnuson Act relating to the transshipment at sea of fish products by foreign vessels.

Section 115.—Civil Penalties and Permit Sanctions; Rebuttable Presumptions

Section 115 of the reported bill would amend section 308 of the Magnuson Act to strengthen the effectiveness of civil penalties and permit suspensions and would amend section 310 of the Magnuson Act with respect to establishing a rebuttable presumption about large-scale driftnet fishing. Section 115(a) would amend section 308(a) so that the Secretary would not have to take into account a person's ability to pay in determining the level of a civil penalty for the commission of an act prohibited by the Magnuson Act. Section 115(b) would amend section 308(b) to restrict a person against whom a permit suspension has been imposed for the nonpayment of a civil penalty or criminal fine from being able to appeal the permit suspension. This subsection also would eliminate the unnecessary requirement that a person seeking to obtain review in U.S. District Court serve a copy of their complaint to the Secretary, Attorney General and appropriate U.S. Attorney. Section 115(c) would amend the permit sanctions to allow the Secretary to revoke, suspend, or impose conditions and restrictions on a permit in any case in which an amount in settlement of a civil forfeiture imposed on a vessel or other property has not been paid and is overdue. Finally, section 115(d) would amend section 310(e) of the Magnuson Act to make it a rebuttable presumption that a vessel inside the U.S. EEZ or on the high seas that has large-scale driftnet fishing gear on board is engaged in large-scale driftnet fishing.

Section 116.—Enforcement

Section 116 of the reported bill would make a number of changes to section 311 of the Magnuson Act on enforcement. Subsection (a) would amend provisions relating to jurisdiction over cases and controversies arising under the Magnuson Act so that the appropriate court in the case of the Northern Mariana Islands is the United States District Court for the Northern Mariana Islands. Subsection (b) would amend section 311(e)(1) of the Magnuson Act to expand the laws under which sums received as fines, penalties and forfeitures can be used to pay for enforcement costs and expenses, including costs such as costs for storing seized property, investigation costs, and reimbursements to Federal and State agencies for services performed. Under current law, the Secretary is authorized to use only sums received under the Magnuson Act and other fishery resource laws for such purposes. This change would authorize use of sums received under the Magnuson Act and all other marine resource laws. Subsection (b) also would amend section 311(e)(1) to establish a minimum reward of 20 percent of the penalty collected to a person for furnishing information which led to an arrest, conviction, civil penalty assessment, or forfeiture of property for a violation of the Magnuson Act or other marine resource law enforced by the Secretary.

Section 116(c) would amend section 311(e)(2) of the Magnuson Act to make persons who have been found in an administrative or judicial proceeding to have violated the Magnuson Act or other marine resource law enforced by the Secretary to be liable for the cost incurred in the sale, storage, care, and maintenance of any fish or other property seized in connection with the violation. Under existing law, only persons who have been assessed a civil penalty for, or convicted of, a violation of the Magnuson Act are liable for these costs. The amendment is meant to require persons who are found in an administrative proceeding to have violated the Magnuson Act, but who are not assessed a civil penalty, to nevertheless be liable for costs incurred in the sale, storage, care, and maintenance of property seized in connection with the violation. The amendment is also meant to broaden the existing requirement so that persons found to have violated other marine resource laws enforced by the Secretary are liable for those costs.

Section 116(d) of the reported bill would redesignate section 311(g) of the Magnuson Act as section 311(i) and add two new subsections to section 311. New subsection (g) would require the Secretary to support cooperative enforcement agreements between Federal and Pacific Insular Area authorities to the extent practicable. New subsection (h) would require the Secretary and the Secretary of the Department in which the Coast Guard is operating to submit a report each year on the effectiveness of the enforcement of fishery management plans, amendments and regulations under each Council's jurisdiction. The Secretaries would be required to consult with the Councils in preparing the report, and would be required to submit the report at the same time as the President's budget. The report would be required to include an analysis of the adequacy of Federal personnel and funding resources, as well as recommendations to improve enforcement that

should be considered in developing plans, amendments and regulations.

Section 116(e) would amend the definitions applicable to section 311 to include the transshipment at sea of fish products by foreign vessels in the definition of “provisions of this Act” for enforcement purposes.

Section 117.—North Pacific and Northwest Atlantic Ocean Fisheries

This section of the reported bill would amend section 313 and 314 of the Magnuson Act to deal with a number of conservation issues in the North Pacific and extend the authorization of appropriations for the Northwest Atlantic Ocean Fisheries Reinvestment Program. Section 117(a) would amend the title of section 313 of the Magnuson Act to read “NORTH PACIFIC FISHERIES CONSERVATION” and add four new subsections to address bycatch reduction, the measurement of catches, and the full utilization and retention of economic discards in fisheries under the jurisdiction of the North Pacific Council. New section 313(f) would require the North Pacific Council to lower, on an annual basis for at least four years, the total amount of economic discards occurring in the fisheries under its jurisdiction. This subsection is meant to ensure that the bycatch reduction requirements that would be added to the Magnuson Act by the reported bill would result in an actual significant reduction in the total amount of economic discards in North Pacific fisheries. Under the changes to fishery management plan requirements (section 302(a) of the Magnuson Act) that would be made by the reported bill, the North Pacific Council would be required to include measures in each plan to minimize bycatch and, as a second priority, minimize the mortality of bycatch that cannot be avoided. New section 313(f) would emphasize the reduction of economic discards, or bycatch which fishermen choose not to retain. Reductions in the North Pacific of regulatory discards, or bycatch which fishermen are required by regulation not to retain would be accomplished primarily through the new plan requirements in section 302(a).

New section 313(g) of the Magnuson Act would provide the North Pacific Council with authority to recommend a system of fees in a fishery to provide incentives to reduce bycatch and bycatch rates. The fees would not be allowed to exceed one percent of the estimated annual ex-vessel value of the target species in the fishery. New subsection (g) would also provide an exemption from the IFQ moratorium in section 303(d) of the Magnuson Act (as amended by the reported bill) to allow the North Pacific Council to submit measures which provide allocations of regulatory discards to individual fishing vessels as an incentive to reduce per vessel bycatch and bycatch rates. Any regulatory discard allocations would not be allowed to be transferable for monetary consideration and would be required to be reallocated on an annual basis. The North Pacific Council could not submit nor could the Secretary approve any such measures unless they would result in an actual reduction in regulatory discards, and unless an accurate enumeration of the target species, economic discards and regulatory discards is available in the fishery. The North Pacific Council would be authorized to include any additional restrictions deemed appropriate on the trans-

ferability of regulatory discard allocations. Such additional restrictions may be necessary to ensure the enforceability of regulatory discard allocations or for other reasons determined by the Council.

New section 313(h) would require the North Pacific Council to submit measures to ensure the total catch measurement in each fishery under its jurisdiction by June 1, 1997. To the extent the measures do not require the weighing of fish, the North Pacific Council and Secretary would be required to submit a plan to Congress by January 1, 1998 to allow for weighing, unless the Council determines that weighing is not necessary to ensure the total catch measurement in a fishery.

New section 313(i) would require the North Pacific Council to submit a report to the Secretary by June 1, 1999 on the advisability of requiring the full retention and full utilization of economic discards under its jurisdiction. The report is not intended to prevent the North Pacific Council from submitting, nor the Secretary from approving, measures to require the full retention and full utilization of economic discards or other types of bycatch prior to June 1, 1999, as long as such measures are consistent with the other requirements of the Magnuson Act, as amended by the reported bill.

Section 117(b) of the reported bill would amend section 314 of the Magnuson Act to authorize annual appropriations of \$5,000,000 in each of the fiscal years through 2000 for the Northwest Atlantic Ocean Fisheries Reinvestment Program.

Section 118.—Transition to Sustainable Fisheries

Section 118 would amend Title III of the Magnuson Act by adding two new sections authorizing activities to facilitate the attainment of sustainable fisheries. In many fisheries, both in the United States and throughout the world, too many fishermen are chasing too few fish. Such excess harvesting capacity may result in social and economic pressure to raise the allowable catch levels in the fishery, increase competition among fishermen, and reduce economic stability of fishery participants. One mechanism to address this problem is a “buyout” program in which fishing capacity is reduced by making payments to fishermen for removing excess vessels or permits. Section 118(a) would add a new section 315 to the Magnuson Act establishing procedures for conducting such a fishing capacity reduction program.

Under new section 315(a), the Secretary, with the approval of the appropriate Council and in consultation with interested parties, would be authorized to conduct a voluntary buyout program if the Secretary determines that: (1) the program is cost effective and necessary for a fishery rebuilding effort or to achieve fishery conservation and management goals; and (2) the management plan for the fishery is consistent with the proposed program and contains adequate measures to ensure that the total allowable catch for the fishery is not exceeded and to prevent replacement of fishing effort removed by the program. New section 315(a) also would establish that the objective for a buyout program is to obtain the maximum sustained reduction in fishing capacity, at the least cost, in a minimum period of time. To achieve that objective, the Secretary would be authorized to pay fishermen to relinquish fishing permits and to scrap fishing vessels or permanently prevent their further use

in fishing. The first use of such payments would be to retire any loan or lien on the vessel or permit, including a federally guaranteed debt. The Committee intends that in any situation in which a vessel is removed from the fishery, any associated permit would be removed as well.

New section 315(b) would authorize funding for a fishing capacity reduction program by any combination of amounts available under the Saltonstall-Kennedy Act, for fisheries disaster relief, through an industry fee system, or from states, other public sources or private organizations.

New section 315(c) addresses procedures for establishing an industry fee system to fund a buyout program. If an industry fee system is necessary, the Secretary, with the approval of the appropriate Council, would be authorized to conduct a referendum to assess industry willingness to invest in a buyout program and pay for a portion of the program costs through landing fees. Prior to conducting the referendum, the Secretary would be required to notify and inform all permit and vessel owners who would be affected by the program and required to pay fees. A two-thirds majority vote of the participants voting in the referendum would be required to approve the industry fee system. An industry fee system under this new section would not be authorized to exceed five percent of ex-vessel value of landings and would remain in effect only until such time as any debt obligation incurred to finance the buyout program is fully paid. Fees collected to pay a debt obligation incurred to fund a buyout program would be paid into a subaccount of the fishing capacity reduction fund of the General Treasury established exclusively for the purpose of making payments on that debt obligation. The Committee intends that any fees assessed in a fishery would be used solely for a buyout program in that fishery.

New section 315(d) would require the Secretary, in consultation with the Council and other interested parties to develop an implementation plan for a fishing capacity reduction program. The plan would define criteria for eligibility, establish procedures for program participation, and be published in the Federal Register for a 60-day public comment period prior to its adoption in final form. A plan that includes industry fees or any debt obligation could not be approved by the Secretary unless an industry fee system had been adopted by the fishermen through a referendum.

Section 118(b) of the reported bill would require the Secretary to report to Congress on the role of the Federal government in subsidizing changes in the capacity of U.S. fishing fleets, and otherwise influencing aggregate capital investment in fisheries.

Section 118(c) of the reported bill would add a new section 316 to the Magnuson Act on the transition to sustainable fisheries. New section 316 would authorize disaster relief for a commercial fishery failure due to a fishery resource disaster and allow the Secretary to develop a sustainable development strategy for any fishery under Federal management. Subsection (a) of the new section would authorize the Secretary to develop such a strategy for any fishery that is overfished or for which a fishery management plan is being developed. The subsection is not intended to provide the Secretary with new authority to develop fishery management plans. Exercise of the authority provided in the subsection would

be at the Secretary's discretion or at the request of an affected state governor or fishing community. Strategies would: (1) be developed in consultation with the appropriate Councils, state and local governments, and other interested parties; (2) establish long-term objectives for the fishery; and (3) guide transition to a sustainable fishery, taking into consideration economic, social and environmental factors. For those fisheries involved in a rebuilding effort, the strategy would identify Federal and state programs which could provide assistance to fishermen and fishing communities. The Secretary would submit a report to Congress on any sustainable development strategy within six months of its development.

Upon a determination of a commercial fishery failure due to a fishery resource disaster, new section 316(b) would authorize the Secretary to make money available for the use of NOAA, affected states, fishing communities and fishermen to assess the social and economic impacts of the failure, to rebuild the fishery, and to assist those affected by the failure. The fishery resource disaster may result from natural causes, man-made causes (such as an oil spill) that cannot be controlled by fishery managers, or undetermined causes. Prior to making funds available under new section 316(b), the Secretary would be required to determine that any activity for which the funds would be used would not expand the size or scope of the fishery failure into other fisheries or geographic regions. The Federal cost share of any activity carried out under this new section could not exceed 75 percent of the cost of that activity. New section 316 would also authorize the appropriation of sums necessary to fund any activity carried out under this section.

Section 118(d) of the reported bill would amend section 2(b)(1)(A) of the Saltonstall-Kennedy Act to promote and develop U.S. fisheries products, allowing the use of funds available under that Act for the Federal share of a vessel or permit buyout program under new section 315 of the Magnuson Act.

TITLE II—FISHERY MONITORING AND RESEARCH

Section 201.—Change of Title

Section 201 would amend the heading of title IV of the Magnuson Act to

“FISHERY MONITORING AND RESEARCH”.

Section 202.—Registration and Data Management

Section 202 would amend title IV of the Magnuson Act by adding a new section 401 on vessel registration and data management. The Committee recognizes the need for more complete and accurate information and timely data analysis to improve the effectiveness of national fishery management programs and to promote economic and ecological sustainability. At the same time, Committee testimony expressed concern about increasing paperwork requirements and decreasing management flexibility. To address these issues, this section would require the Secretary to develop recommendations for a standardized, regionally based fishing vessel registration and data management system in cooperation with the Secretary of the Department in which the Coast Guard is operating, the States,

Councils, and Marine Fisheries Commissions. The vessel registration and fisheries data management system would: (1) standardize vessel registration and data collection systems; (2) integrate programs under existing fishery management plans; (3) avoid duplication and use information collected from existing systems; (4) implement programs cooperatively; (5) authorize funding for system implementation through State, regional, or tribal entities, and Marine Fisheries Commissions; (6) establish standardized information units and formats for measurements; (7) minimize vessel paperwork; (8) include all species of fish in the geographic area of authority of the Councils and all vessels in such an area, including vessels carrying a passenger for hire but not recreational vessels; (9) require United States fish processors, fish dealers, and other first ex-vessel purchasers of fish to submit data; and (10) prescribe measures to ensure the confidentiality of information collected and the timely release of complete and accurate information.

For each fishing vessel, the registration program would obtain the following information: the name and official number of the vessel; the name and address of the owner; the tonnage, and other pertinent information on vessel characteristics; and the fisheries in which the vessel participates. The data management system would determine for each fishery: the number of participating fishing vessels, including those which carry passengers for hire; the time and location of harvest; the gear employed and appropriate unit of fishing effort; and other factors. The term 'passenger for hire' would be defined for this section as provided under section 2102(21a) of title 46, United States Code. Registration under this system would not be considered a permit, and new section 401 would prohibit revocation, suspension, or imposition of other restrictions on a registration. The registration system is not intended to be used for law enforcement purposes, but rather to provide accurate information for effective conservation and management. Consequently, it is essential to promote voluntary participation in the system and to encourage fishermen to provide accurate and timely information without fear of financial penalties or restrictions on operations. Within one year after the date of enactment of the reported bill, the Secretary would publish a proposed registration and data management program in the Federal Register for a 60-day public comment period. The proposal would describe cooperative arrangements with other agencies, States, Councils and other interested parties and any necessary regulations or legislation. Within 60 days after the end of the public comment period, the Secretary would then be required to transmit to Congress a revised proposal to implement the national fishing vessel registration system. Finally, new section 401 calls for the Secretary to report to Congress within 15 months of the date of enactment of the reported bill on the need to include recreational vessels in the registration system.

Section 203.—Data Collection

Section 203 would amend section 402 of the Magnuson Act to establish a new subsection on data collection. New subsection (a) of section 402 would authorize the Councils to request that the Secretary implement a data collection program for a fishery if it is necessary for the management of that fishery. Similar to existing Mag-

nuson Act provisions, under new subsection (b) data submitted to the Secretary would be confidential except when, among other circumstances: (1) it is used to verify catch under an IFQ program; (2) written permission is provided; or (3) it is information on bycatch collected by an observer under the North Pacific Research Plan and released under certain circumstances. New subsection (c) would prohibit the use in enforcement procedures of information collected by a person who is being carried on board a fishing vessel as part of a program to collect fishery information in which the vessel operator is a voluntary participant. The subsection also would limit the Secretary's authority to require submission of Federal or State tax information as a prerequisite to the issuance of a Federal fishing permit unless confidentiality of that information is ensured and the information is necessary for conservation and management. New subsection (e) would authorize the Secretary to enter into contractual agreements with the States or the private sector to provide vessels, equipment and other services necessary to conduct fishery resource assessments when such arrangements would yield statistically reliable results. In consultation with the appropriate Council, the Secretary would be authorized to structure competitive solicitations for services from the fishing industry. The Secretary also would be able to compensate the contractor by allowing the retention and sale by the contractor of fish harvested during data collection, or by allowing subsequent harvest, retention and sale of a portion of the allowable catch of the surveyed fish when the quantity or quality of fish harvested during the assessment is not expected to provide adequate compensation. The Secretary would be required to undertake efforts to expand fishery resource research efforts nationally.

Section 204.—Observers

Section 204 would add a new section 403 to title IV of the Magnuson Act dealing with observers. Subsection (a) of new section 403, requires establishment of guidelines for fishing vessels that carry observers. Within one year of the date of enactment of the reported bill the Secretary would be required to promulgate regulations for determining when vessel facilities are adequate for carrying observers and ensuring the safety of observers while aboard a vessel. New subsection (b) calls for the Secretary in cooperation with States and the National Sea Grant College Program to ensure proper observer training making use of university training facilities where appropriate. Under new subsection (c) claims for observer's wages would be considered as maritime liens against the vessel. New subsection (d) would provide worker compensation under the Federal Employee Compensation Act for observers while aboard a vessel for the purposes of performing their duties. However, this pecuniary arrangement would not apply to an observer while he or she is engaged in performing duties in the service of the vessel.

Section 205.—Fisheries Research

Section 205 would add a new section 404 to the Magnuson Act that revises and expands the fisheries research provisions currently contained in section 304(e) of existing law and would require the Secretary to initiate and maintain a comprehensive program of

fishery research. The section retains the triennial requirement for development of a strategic plan for fisheries research, and would provide for the timely dissemination of accurate and complete data collected under this section.

Section 206.—Incidental Harvest Research

Section 206 would add a new section 405 of the Magnuson Act containing updated provisions on incidental harvest research now found in section 304(g) of existing law. This section would require the Secretary, after consultation with the appropriate Councils, to conclude data collection in the incidental harvest research program for the shrimp trawl fishery. The Secretary would make data collected prior to June 30, 1994 available to the public. For stocks of fish subject to significant incidental harvest, the Secretary would be required to conduct a program to further investigate and evaluate the status and effects of human activities on these stocks and to identify management alternatives. Also, within one year of the date of enactment of the reported bill, the Secretary would be required to conclude a program to develop technological devices and other methods to reduce the incidental mortality of bycatch. Bycatch reduction targets would take into account the level of bycatch mortality on November 28, 1990, the date of enactment of the last comprehensive Magnuson Act reauthorization. The purpose of this provision is not to imply that no further reductions in bycatch and bycatch mortality are necessary, but to recognize that shrimp trawl fishermen have made significant progress in addressing this problem in recent years. A report to Congress on the results of these programs would be mandated. This section also would require that efforts to reduce incidental harvest be consistent with measures applicable throughout the range of the bycatch species concerned, and the need to avoid serious adverse effects on the bycatch species or ecology of the affected area.

Section 207.—Miscellaneous Research

This section would amend section 406 of the Magnuson Act to require the Secretary to establish a fisheries ecosystem advisory panel to develop recommendations for expanding the application of ecosystem management principles to fishery conservation and management activities. The panel would consist of not more than 20 individuals and include experts in ecosystem principles and persons involved in marine resources management. Within two years of the date of enactment of the reported bill, the Secretary would be required to submit a report by the panel which would include an analysis of extent of the current use of ecosystem principles in fisheries management, and proposed actions by the Secretary and Congress to expand the application of ecosystem principles in fisheries management. The procedures applicable to advisory panels under section 302(j) of the Magnuson Act, as amended, would apply to the fisheries ecosystem management advisory panel.

This section also would add a new section 407 to the end of title IV of the Magnuson Act to address Gulf of Mexico red snapper research. This section would require (within one year of enactment of the reported bill) that the Secretary complete an independent peer review of the red snapper fishery information to determine if:

(1) fishery statistics adequately account for all recreational and commercial activities; (2) the scientific methods used for assessment and the scientific basis for management are appropriate; (3) the management measures currently used are appropriate to conserve red snapper; and (4) the benefits, costs, and alternatives to establishing an individual fishing quota system have been properly evaluated. This section would provide commercial and recreational fishermen the opportunity to participate in the peer review, and provide information to the Secretary without being subject to penalty for any past violation. The Secretary would submit a report on the findings of the peer review to the Gulf of Mexico Fishery Management Council.

Section 208.—Study of Contribution of Bycatch to Charitable Organizations

This section would require the Secretary to conduct a study of the contribution of bycatch to charitable organizations by commercial fishermen. The study would determine: (1) the amount of bycatch contributed annually; (2) the economic benefits to commercial fishermen from this contribution; and (3) the impact on fisheries of the availability of those economic benefits. The Secretary would submit a report on the study to Congress within one year of the enactment of the reported bill. The term “bycatch” would have the meaning provided in section 3(2) of the Magnuson Act as amended by the reported bill.

Section 209.—Study of Identification Methods for Harvest Stocks

This section would provide the Secretary the general authority to conduct a study to determine the best possible methods for identifying various Atlantic and Pacific salmon and steelhead stocks which are harvested while in the ocean. The study would assess various tagging and identification methods. The Secretary would report the findings of the study to Congress and any recommendations for any legislation deemed necessary on the basis of the study within six months after the date of enactment of the reported bill.

Section 210.—Clerical Amendments

This section would amend the table of contents of the Magnuson Act relating to title IV.

TITLE III—FISHERIES FINANCING

Section 301.—Short Title

This section provides that this title shall be cited as the “Fisheries Financing Act”.

Section 302.—Fisheries Financing and Capacity Reduction

The Committee is aware that in many regions of the United States fish stocks have been declining to the point that severe financial strains have been placed on fishing communities and the sustainability of the fishery. This section would provide financial relief in these situations.

Section 302 would amend title XI of the Merchant Marine Act, 1936 (46 U.S.C. 1271 et seq.) by adding a new section 1111 that

provides authority for the Secretary to guarantee, and make commitments to guarantee, the principal of and interest on financial obligations which aid in refinancing fishing vessels or fishery facilities that are having financial difficulty due to reduced cash flows because of limited harvest allocations associated with the implementation of fishery recovery efforts. The Secretary would be authorized to refinance up to 100 percent of the amount of the obligation, except that in no case would that percentage exceed 75 percent of the unencumbered market value as determined by an independent marine surveyor for a fishing vessel or other competent person for a fishery facility. Obligations guaranteed under this section may include provisions that allow only the interest on the obligation to be paid during the time period of the obligation and the principal and interest to be fully amortized between the date that the stock is projected to be recovered and the final maturity date of the obligation.

Section 1111 stipulates that this new Secretarial authority is contingent upon: (1) a Secretarial determination that a commercial fishery failure has occurred and Secretarial approval of a fishery rebuilding effort for the stock; (2) a finding that any guarantees will not have an adverse impact on other fisheries in the region; (3) reasonable prospects of full repayment by the obligor; and (4) agreement of the obligor to provide such security and meet such conditions as the Secretary may prescribe to protect the financial interest of the U.S. government. All obligations incurred under this section would be accounted for separately in a subaccount of the Federal Ship Financing Fund entitled the Fishery Recovery Refinancing Account.

Section 302 of the reported bill also would add a new section 1112 to the Merchant Marine Act, 1936, providing authority for the Secretary to guarantee the payment of debt obligations that have been approved by the Secretary for implementing a fishing capacity reduction program. No debt obligation could exceed \$100.0 million in unpaid outstanding principal for a fishing capacity reduction program approved by the Secretary, nor could a debt obligation exceed 20 years in maturity. The source of payment for a debt obligation would be industry fishing fees. The Secretary's authority to guarantee a debt obligation would be contingent upon: (1) the adoption of a fee system established under section 315(c) of the Magnuson Act (as amended) that is adequate to make such payments and (2) available appropriations for the subsidy costs of the guarantee under the Federal Credit Reform Act. The section also authorizes the use of other available sources of funds (such as disaster relief or State monies) to pay the debt obligation.

Section 1112 also would establish a fishing capacity reduction fund in the Treasury to receive all funds that are available to the Secretary to pay the costs of the fishing capacity reduction program. Fishing fees collected to pay debt obligations incurred by entities under this section would be placed in separate subaccounts within this fund.

Section 303.—Fisheries Loan Guarantee Reform

This section would amend title XI of the Merchant Marine Act, 1936, to modify the conditions under which NOAA provides loan

guarantees to the fishing industry through the FOG program. Subsection (a) amends section 1104A(b)(2) of the Merchant Marine Act, to allow obligations related to fishing vessels, fishery facilities and IFQ purchases to be placed through the Federal Financing Bank, unless such placement is not reasonably available or placement elsewhere is available at a lower annual yield. Fishery loan guarantees are currently the only type of federal guarantee not allowed to be placed through the Federal Financing Bank. Placement of FOG loan guarantees through the Federal Financing Bank will allow a reduction in the interest costs of the guarantees. Subsection (b) would limit the level of loans that may be guaranteed by the FOG program to \$40 million annually. In setting a cap, the Committee intends to allow for the necessary refinancing and construction of fishing vessels and fishery facilities without increasing U.S. harvesting capacity. Subsection (c) would allow FOG fees to be adjusted so that fees paid by loan guarantee applicants are kept roughly the same as the current amounts being paid, even though savings have been achieved by placing obligations through the Federal Financing Bank. Subsection (d) would allow NOAA to use these savings to pay for the direct administrative costs of the FOG program. Specifically, subsection (d) authorizes the Secretary to use up to \$1.7 million annually of the money generated by the fees to pay for such administrative costs. Subsection (e) would prohibit the Federal government from guaranteeing any new loans until October 1, 2001 for the construction of new fishing vessels if the construction would increase the U.S. harvesting capacity within the U.S. EEZ.

TITLE IV—MARINE FISHERY STATUTE REAUTHORIZATIONS.

Section 401.—Marine Fish Program Authorization of Appropriations

This section would authorize appropriations for a number of NOAA's marine fisheries programs. Subsection (a) would authorize \$49.3 million for FY 1996, \$50.8 million for FY 1997, and \$52.3 million annually for FY 1998, FY 1999, and FY 2000 for fisheries information collection and analysis activities. Subsection (b) would authorize \$28.2 million for FY 1996, \$29 million annually for FY 1997, and \$29.9 million annually for FY 1998, FY 1999, and FY 2000 for fisheries conservation and management operations. Subsection (c) would authorize \$22.4 million for FY 1996, \$23.1 million for FY 1997, and \$23.8 million annually for FY 1998, FY 1999, and FY 2000 for State and industry cooperative programs. These authorizations are primarily for responsibilities established under the Fish and Wildlife Act of 1956 and laws implementing international fishery agreements. The authorizations in this section are in addition to authorizations in other laws such as the Marine Mammal Protection Act (MMPA) and the Endangered Species Act. This section also would extend the authorization of appropriations for the NMFS Chesapeake Bay Office through FY 1997.

Section 402.—Interjurisdictional Fisheries Act Amendments

This section amends section 308(a) of the Interjurisdictional Fisheries Act (IFA) of 1986 (16 U.S.C. 4107) to authorize appro-

priations for development of interstate management grants at \$3.4 million for FY 1996; \$3.9 million for FY 1997; and \$4.4 million annually for FY 1998, 1999 and 2000. Section 308(b) is amended to provide additional appropriations for fisheries disaster relief in the amount of \$65 million for each of FY 1996 through FY 2000. In addition, section 308(c) is amended to provide authorizations of \$650,000 for FY 1996; \$700,000 for FY 1997; and \$750,000 for FY 1998, 1999 and 2000 to support the Atlantic, Gulf and Pacific Commissions.

This section also amends section 308(d) of the IFA to allow use of \$55 million that was appropriated in 1992 to compensate fishermen for their losses after Hurricane Andrew. The amendments would allow funds to be provided directly to fishermen or indirectly to State and local government agencies and non-profit organizations. This section removes the provision which limits the amount an individual can receive to 75 percent of the uninsured loss. In the Pacific Northwest, fishermen already have been hired to participate in habitat restoration and data collection programs using this funding and authority.

This section also changes “gross revenues” to “net annual revenues from commercial fisheries” and removes the \$100,000 limit in total assistance to any one person. In the Northeast region, NOAA has conducted a \$2 million pilot program to buy back fishing vessels in an effort to reduce fishing capacity. Many of the bids received from the fishermen to sell their fishing vessels to the government exceeded this limit; therefore, removal of the limit is necessary for effective implementation of a fishing capacity reduction program. The Pacific Northwest and Gulf of Mexico regions also may need this additional flexibility in the statute to assist commercial fishermen in projects that will provide long-term resource benefits. The amendments made by this section stipulate that funding for a fishing capacity reduction program under this authority would be contingent upon a determination by the Secretary that adequate conservation and management measures are in place for the fishery and that measures are also in place to prevent the replacement of that fishing effort for that fishery. This requirement recognizes that a fishing vessel capacity reduction program and fishery rebuilding efforts are important elements of a comprehensive program to restore sustainable fisheries.

Section 403.—Anadromous Fisheries Amendments

This section amends section 4 of the Anadromous Fish Conservation Act (16 U.S.C. 757d) to extend the current annual authorization level of \$8.0 million through FY 2000.

Section 404.—Atlantic Coastal Cooperative Management Act Amendments

This section amends section 804 of the Atlantic Coast Fisheries Cooperative Management Act (16 U.S.C. 5102) to extend the current annual authorization level of \$7 million through FY 2000. Section 404 also amends the definition subsection to clarify the meaning of the term “coastal fishery management plan”. The current definition was never intended to restrict the Secretary’s authority to regulate fishing activities in the EEZ nor actions necessary to

provide for effective conservation and management for Atlantic coastal fisheries. The Secretary would continue to be required to consult with the appropriate management bodies prior to taking regulatory action to ensure that his actions are consistent with the management plans already in effect for the fishery.

Section 405.—Technical Amendments to Maritime Boundary Agreement

This section would make technical and conforming amendments related to title III of the Act entitled, “An Act to provide for the designation of the Flower Garden Banks National Sanctuary (Public Law 102–251) (FGB Act), which provides for the implementation of an agreement between the United States and the former Union of Soviet Socialist Republics (USSR) on the maritime boundary in the Bering Sea. Certain amendments to the Magnuson Act and MMPA made by the FGB Act are contingent upon entry into force of this agreement in the United States, which has not yet occurred. Section 405 would make amendments so that title III of the FGB Act would continue to correspond to the proper sections of the Magnuson Act as amended by the reported bill. Section 405 would also make a conforming amendment to the MMPA, to which a section of the FGB Act no longer correctly corresponds as a result of amendments made to the MMPA in 1994.

ROLLCALL VOTES IN COMMITTEE

In accordance with paragraph 7(c) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following description of the record votes during its consideration of S. 39:

Senator Gorton offered an amendment to the amendment (in the nature of a substitute) offered by Senator Stevens on IFQ Moratorium. By rollcall vote of 7 yeas and 11 nays as follows, the amendment was defeated:

YEAS—7—

Mr. McCain ¹
Mr. Burns
Mr. Gorton —
Mr. Ashcroft
Mr. Rockefeller ¹
Mr. Breaux
Mr. Bryan ¹—

NAYS—11

Mr. Pressler
Mr. Stevens
Mr. Lott ¹
Ms. Snowe
Mr. Frist
Mr. Hollings
Mr. Inouye
Mr. Ford
Mr. Exon ¹
Mr. Kerry
Mr. Dorgan¹

¹ By proxy

Senator Gorton offered an amendment on the national standard of promoting efficiency. On a rollcall vote of 6 yeas and 11 nays as follows, the amendment was defeated:

YEAS—6—	NAYS—11
Mr. McCain ¹	Mr. Pressler
Mr. Gorton	Mr. Stevens
Mr. Ashcroft ¹ —	Mr. Lott ¹
Mr. Frist	Ms. Snowe
Mr. Breaux	Mr. Hollings
Mr. Bryan —	Mr. Inouye
	Mr. Ford ¹
	Mr. Exon ¹
	Mr. Rockefeller
	Mr. Kerry
	Mr. Dorgan

¹ By proxy

Senator Gorton offered an amendment on State authority. On a rollcall vote of 9 yeas and 9 nays as follows, the amendment was defeated:

YEAS—9—	NAYS—9
Mr. Pressler	Mr. Hollings
Mr. Stevens	Mr. Inouye
Mr. McCain ¹	Mr. Ford
Mr. Burns —	Mr. Exon ¹
Mr. Gorton	Mr. Rockefeller ¹
Mr. Lott ¹ —	Mr. Kerry
Ms. Snowe	Mr. Breaux
Mr. Ashcroft ¹ —	Mr. Bryan ¹
Mr. Frist ¹	Mr. Dorgan ¹

¹ By proxy

Senator Gorton offered an amendment on the interest of municipalities. On a rollcall vote of 6 yeas and 12 nays as follows, the amendment was defeated:

YEAS—6—	NAYS—12
Mr. McCain ¹	Mr. Pressler
Mr. Gorton	Mr. Stevens
Mr. Ashcroft ¹ —	Mr. Burns ¹
Mr. Frist ¹	Ms. Lott ¹
Mr. Breaux	Ms. Snowe
Mr. Bryan ¹ —	Mr. Hollings
	Mr. Inouye
	Mr. Ford ¹
	Mr. Exon ¹
	Mr. Rockefeller ¹
	Mr. Kerry
	Mr. Dorgan ¹

¹ By proxy

Senator Gorton offered an amendment to keep CDQ's at the current level. On a rollcall vote of 6 yeas and 11 nays as follows, the amendment was defeated:

YEAS—6—	NAYS—11
Mr. McCain ¹	Mr. Pressler
Mr. Gorton	Mr. Stevens
Mr. Ashcroft ¹ —	Mr. Lott ¹
Mr. Rockefeller ¹	Ms. Snowe
Mr. Breaux	Mr. Frist ¹
Mr. Bryan ¹ —	Mr. Hollings
	Mr. Inouye
	Mr. Ford ¹
	Mr. Exon ¹
	Mr. Kerry
	Mr. Dorgan ¹

¹ By proxy

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 15. COMMERCE AND TRADE

CHAPTER 15. ECONOMIC RECOVERY

§ 713c-3. Promotion of the free flow of domestically produced fishery products

* * * * *

(b) TRANSFER OF FUNDS.—

(1) The Secretary of Agriculture shall transfer to the Secretary each fiscal year, beginning with ah fiscal year commencing July 1, 1954, and ending on June 30, 1957, from moneys made available to carry out the provisions of section 32 of such Act of August 24, 1935 [7 U.S.C. 612c], an amount equal to 30 per centum of the gross receipts from duties collected under the customs laws on fishery products (including fish, shellfish, mollusks, crustacea, aquatic plants and animals, and any products thereof, including processed and manufactured products), which shall be maintained in a separate fund only for—

(A) use by the Secretary—

(i) to provide financial assistance for the purpose of carrying out fisheries research and development projects approved under subsection (c);

(ii) to implement the national fisheries research and development program provided for under subsection (d); [and]

(iii) to implement the Northwest Atlantic Ocean Fisheries Reinvestment Program established under

section 314 of the Magnuson Fishery Conservation and Management [Act [16 U.S.C. 1863].] Act; and
(iv) to fund the Federal share of a buy-out program established under section 315(b) of the Magnuson Fishery Conservation and Management Act; and

(B) the provision of moneys, subject to paragraph (2), to carry out the purposes of the Fisheries Promotion Fund established under section 208(a) of the Fish and Seafood Promotion Act of 1986.

(2) There are transferred from the fund established under paragraph (1) to the Fisheries Promotion Fund referred to in paragraph (1)(B) \$750,000 in fiscal year 1987, \$3,000,000 in each of fiscal years 1988 and 1989, and \$2,000,000 in each of fiscal years 1990 and 1991.

* * * * *

TITLE 16. CONSERVATION

CHAPTER 9A. PRESERVATION OF FISHERY RESOURCES

§ 757d. Funding

(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out the purposes of this Act [16 U.S.C. 757a–757g] not to exceed the following sums:

(1) \$8,152,500 for fiscal year 1989.

(2) \$8,000,000 for each of the fiscal years 1990, 1991, 1992, 1993, 1994, [and 1995.] 1995, 1996, 1997, 1998, 1999, and 2000.

Sums appropriated under this subsection are authorized to remain available until expended.

(b) LIMITATION ON OBLIGATION OF FUNDS IN ANY ONE STATE.—Not more than \$1,250,000 of the funds appropriated under this section in any one fiscal year shall be obligated in any one State.

CHAPTER 31. MARINE MAMMAL PROTECTION

GENERALLY

§ 1362. Definitions

For the purposes of this Act—

(1) The term “depletion” or “depleted” means any case in which—

(A) the Secretary, after consultation with the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under title II of this Act [16 U.S.C. 1401 et seq.], determines that a species or population stock is below its optimum sustainable population;

(B) a State, to which authority for the conservation and management of a species or population stock is transferred under section 109 [16 U.S.C. 1379], determines that such species or stock is below its optimum sustainable population; or

(C) a species or population stock is listed as an endangered species or a threatened species under the Endangered Species Act of 1973.

(2) The terms “conservation” and “management” mean the collection and application of biological information for the purposes of increasing and maintaining the number of animals within species and populations of marine mammals at their optimum sustainable population. Such terms include the entire scope of activities that constitute a modern scientific resource program, including, but not limited to, research, census, law enforcement, and habitat acquisition and improvement. Also included within these terms, when and where appropriate, is the periodic or total protection of species or populations as well as regulated taking.

(3) The term “district court of the United States” includes the District Court of Guam, District Court of the Virgin Islands, District Court of Puerto Rico, District Court of the Canal Zone, and, in the case of American Samoa and the Trust Territory of the Pacific Islands, the District Court of the United States for the District of Hawaii.

(4) The term “humane” in the context of the taking of a marine mammal means that method of taking which involves the least possible degree of pain and suffering practicable to the mammal involved.

(5) The term “intermediary nation” means a nation that exports yellowfin tuna or yellowfin tuna products to the United States and that imports yellowfin tuna or yellowfin tuna products that are subject to a direct ban on importation into the United States pursuant to section 101(a)(2)(B) [16 U.S.C. 1371(a)(2)(B)].

(6) The term “marine mammal” means any mammal which (A) is morphologically adapted to the marine environment (including sea otters and members of the orders Sirenia, Pinnipedia and Cetacea), or (B) primarily inhabits the marine environment (such as the polar bear); and, for the purposes of this Act, includes any part of any such marine mammal, including its raw, dressed, or dyed fur or skin.

(7) The term “marine mammal product” means any item of merchandise which consists, or is composed in whole or in part, of any marine mammal.

(8) The term “moratorium” means a complete cessation of the taking of marine mammals and a complete ban on the importation into the United States of marine mammals and marine mammal products, except as provided in this Act.

(9) The term “optimum sustainable population” means, with respect to any population stock, the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element.

(10) The term “person” includes (A) any private person or entity, and (B) any officer, employee, agent, department, or instrumentality of the Federal Government, of any State or political subdivision thereof, or of any foreign government.

(11) The term “population stock” or “stock” means a group of marine mammals of the same species of smaller taxa in a common spatial arrangement, that interbreed when mature.

(12) (A) Except as provided in subparagraph (B), the term “Secretary” means—

(i) the Secretary of the department in which the National Oceanic and Atmospheric Administration is operating, as to all responsibility, authority, funding, and duties under this Act with respect to members of the order Cetacea and members, other than walruses, of the order Pinnipedia, and

(ii) the Secretary of the Interior as to all responsibility, authority, funding, and duties under this Act with respect to all other marine mammals covered by this Act.

(B) [In] in section 118 and title IV [16 U.S.C. 1387 and 1421 et seq.] the term “Secretary” means the Secretary of Commerce.

(13) The term “take” means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.

(14) The term “United States” includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, American Samoa, Guam, and Northern Mariana Islands.

[(15) The term “waters under the jurisdiction of the United States” means—

[(A) the territorial sea of the United States;

[(B) the waters included within a zone, contiguous to the territorial sea of the United States, of which the inner boundary is a line coterminous with the seaward boundary of each coastal State, and the outer boundary is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured; and

[(C) the areas referred to as eastern special areas in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990; in particular, those areas east of the maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of Russia is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured.]]

(15) *The term “waters under the jurisdiction of the United States” means—*

(A) the territorial sea of the United States;

(B) the waters included within a zone, contiguous to the territorial sea of the United States, of which the inner boundary is a line coterminous with the seaward boundary of each coastal State, and the other boundary is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured; and

(C) the areas referred to as eastern special areas in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990; in particular, those areas east of the maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of Russia is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured, except that this subparagraph shall not apply before the date on which the Agreement between the United States and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, enters into force for the United States.

(16) The term “fishery” means—

(A) one or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics; and

(B) any fishing for such stocks.

(17) The term “competent regional organization”—

(A) for the tuna fishery in the eastern tropical Pacific Ocean, means the Inter-American Tropical Tuna Commission; and

(B) in any other case, means an organization consisting of those nations participating in a tuna fishery, the purpose of which is the conservation and management of that fishery and the management of issues relating to that fishery.

(18)(A) The term “harassment” means any act of pursuit, torment, or annoyance which—

(i) has the potential to injure a marine mammal or marine mammal stock in the wild; or

(ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

(B) The term “Level A harassment” means harassment described in subparagraph (A)(i).

(C) The term “Level B harassment” means harassment described in subparagraph (A)(ii).

(19) The term “strategic stock” means a marine mammal stock—

(A) for which the level of direct human-caused mortality exceeds the potential biological removal level;

(B) which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act of 1973 within the foreseeable future; or

(C) which is listed as a threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), or is designated as depleted under this Act.

(20) The term “potential biological removal level” means the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. The potential biological removal level is the product of the following factors:

(A) The minimum population estimate of the stock.

(B) One-half the maximum theoretical or estimated net productivity rate of the stock at a small population size.

(C) A recovery factor of between 0.1 and 1.0.

(21) The term “Regional Fishery Management Council” means a Regional Fishery Management Council established under section 302 of the Magnuson Fishery Conservation and Management Act [16 U.S.C. 1852].

(22) The term “bona fide research” means scientific research on marine mammals, the results of which—

(A) likely would be accepted for publication in a referred scientific journal;

(B) are likely to contribute to the basic knowledge of marine mammal biology or ecology; or

(C) are likely to identify, evaluate, or resolve conservation problems.

(23) The term “Alaska Native organization” means a group designated by law or formally chartered which represents or consists of Indians, Aleuts, or Eskimos residing in Alaska.

(24) The term “take reduction plan” means a plan developed under section 118 [16 U.S.C. 1387].

(25) The term “take reduction team” means a team established under section 118 [16 U.S.C. 1387].

(26) The term “net productivity rate” means the annual per capita rate of increase in a stock resulting from additions due to reproduction, less losses due to mortality.

(27) The term “minimum population estimate” means an estimate of the number of animals in a stock that—

(A) is based on the best available scientific information on abundance, incorporating the precision and variability associated with such information; and

(B) provides reasonable assurance that the stock size is equal to or greater than the estimate.

CHAPTER 38. FISHERY CONSERVATION AND MANAGEMENT GENERALLY

§ 1801. Findings, purposes and policy

(a) FINDINGS.—The Congress finds and declares the following:

(1) The fish off the coasts of the United States, the highly migratory species of the high seas, the species which dwell on or in the Continental Shelf appertaining to the United States, and the anadromous species which spawn in United States rivers or estuaries, constitute valuable and renewable natural resources. These fishery resources contribute to the food supply, economy, and health of the Nation and provide recreational opportunities.

[(2) As a consequence of increased fishing pressure and because of the inadequacy of fishery conservation and manage-

ment practices and controls (A) certain stocks of such fish have been overfished to the point where their survival is threatened, and (B) other such stocks have been so substantially reduced in number that they could become similarly threatened.】

(2) *Certain stocks of fish have declined to the point where their survival is threatened, and other stocks of fish have been so substantially reduced in number that they could become similarly threatened as a consequence of (A) increased fishing pressure, (B) the inadequacy of fishery resource conservation and management practices and controls, or (C) direct and indirect habitat losses which have resulted in a diminished capacity to support existing fishing levels.*

(3) Commercial and recreational fishing constitutes a major source of employment and contributes significantly to the economy of the Nation. Many coastal areas are dependent upon fishing and related activities, and their economies have been badly damaged by the overfishing of fishery resources at an ever-increasing rate over the past decade. The activities of massive foreign fishing fleets in waters adjacent to such coastal areas have contributed to such damage, interfered with domestic fishing efforts, and caused destruction of the fishing gear of United States fishermen.

(4) International fishery agreements have not been effective in preventing or terminating the overfishing of these valuable fishery resources. There is danger that irreversible effects from overfishing will take place before an effective international agreement on fishery management jurisdiction can be negotiated, signed, ratified, and implemented.

(5) Fishery resources are finite but renewable. If placed under sound management before overfishing has caused irreversible effects, the fisheries can be conserved and maintained so as to provide optimum yields on a continuing basis.

(6) A national program for the conservation and management of the fishery resources of the United States is necessary to prevent overfishing, to rebuild overfished stocks, to insure conservation, *to facilitate long-term protection of essential fish habitats*, and to realize the full potential of the Nation's fishery resources.

(7) A national program for the development of fisheries which are underutilized or not utilized by the United States fishing industry, including bottom fish off Alaska, is necessary to assure that our citizens benefit from the employment, food supply, and revenue which could be generated thereby.

(8) The collection of reliable data is essential to the effective conservation, management, and scientific understanding of the fishery resources of the United States.

(9) *One of the greatest long-term threats to the viability of commercial and recreational fisheries is the continuing loss of marine, estuarine, and other aquatic habitats. Habitat considerations should receive increased attention for the conservation and management of fishery resources of the United States.*

(10) *Pacific Insular Areas contain unique historical, cultural, legal, political, and geographical circumstances which make*

fisheries resources important in sustaining their economic growth.

(b) PURPOSES.—It is therefore declared to be the purposes of the Congress in this Act—

(1) to take immediate action to conserve and manage the fishery resources found off the coasts of the United States, and the anadromous species and Continental Shelf fishery resources of the United States, by exercising (A) sovereign rights for the purposes of exploring, exploiting, conserving, and managing all fish, within the exclusive economic zone established by Presidential Proclamation 5030, dated March 10, 1983, and (B) exclusive fishery management authority beyond the exclusive economic zone over such anadromous species and Continental Shelf fishery resources, and fishery resources in the special areas;

(2) to support and encourage the implementation and enforcement of international fishery agreements for the conservation and management of highly migratory species, and to encourage the negotiation and implementation of additional such agreements as necessary;

(3) to promote domestic commercial and recreational fishing under sound conservation and management principles;

(4) to provide for the preparation and implementation, in accordance with national standards, of fishery management plans which will achieve and maintain, on a continuing basis, the optimum yield from each fishery;

(5) to establish Regional Fishery Management Councils to exercise sound judgment in the stewardship of fishery resources through the preparation, monitoring, and revision of such plans under circumstances (A) which will enable the State, the fishing industry, consumer and environmental organizations, and other interested persons to participate in, and advise on, the establishment and administration of such plans, and (B) which take into account the social and economic needs of the States; **[and]**

(6) to encourage the development by the United States fishing industry of fisheries which are currently underutilized or not utilized by United States fishermen, including bottom fish off Alaska, and to that end, to ensure that optimum yield determinations promote such **[development.]** *development in a non-wasteful manner; and*

(7) *to promote the protection of essential fish habitat in the review of projects conducted under Federal permits, licenses, or other authorities that affect or have the potential to affect such habitat.*

(c) POLICY.—It is further declared to be the policy of the Congress in this Act—

(1) to maintain without change the existing territorial or other ocean jurisdiction of the United States for all purposes other than the conservation and management of fishery resources, as provided for in this Act;

(2) to authorize no impediment to, or interference with, recognized legitimate uses of the high seas, except as necessary

for the conservation and management of fishery resources, as provided for in this Act;

(3) to assure that the national fishery conservation and management program utilizes, and is based upon, the best scientific information available; involves, and is responsive to the needs of, interested and affected States and citizens; promotes efficiency; draws upon Federal, State, and academic capabilities in carrying out research, administration, management, and enforcement; considers the effects of fishing on immature fish and encourages development of practical measures that *minimize bycatch and avoid unnecessary waste of fish*; and is workable and effective;

(4) to permit foreign fishing consistent with the provisions of this Act;

(5) to support and encourage active United States efforts to obtain internationally acceptable agreements which provide for effective conservation and management of fishery resources, and to secure agreements to regulate fishing by vessels or persons beyond the exclusive economic zones of any nation; **[and]**

(6) to foster and maintain the diversity of fisheries in the United **[States.] States; and**

(7) *to ensure that the fishery resources adjacent to a Pacific Insular Area, including resident or migratory stocks within the exclusive economic zone adjacent to such areas, be explored, developed, conserved, and managed for the benefit of the people of such area and of the United States.*

§ 1802. Definitions

As used in this Act, unless the context otherwise requires—

(1) The term “anadromous species” means species of fish which spawn in fresh or estuarine waters of the United States and which migrate to ocean waters.

(2) *The term “bycatch” means fish which are harvested by a fishing vessel, but which are not sold or kept for personal use, and includes economic discards and regulatory discards but does not include fish caught and released alive that are the target species of recreational fishing under catch and release programs.*

(3) *The term “commercial fishing” means fishing in which the fish harvested, either in whole or in part, enter commerce through sale, barter or trade.*

[(2)] (4) The term “conservation and management” refers to all of the rules, regulations, conditions, methods, and other measures (A) which are required to rebuild, restore, or maintain, and which are useful in rebuilding, restoring, or maintaining, any fishery resource and the marine environment; and (B) which are designed to assure that—

(i) a supply of food and other products may be taken, and that recreational benefits may be obtained, on a continuing basis;

(ii) irreversible or long-term adverse effects on fishery resources and the marine environment are avoided; and

(iii) there will be a multiplicity of options available with respect to future uses of these resources.

【(3)】 (5) The term “Continental Shelf” means the seabed and subsoil of the submarine areas adjacent to the coast, but outside the area of the territorial sea, of the United States, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of such areas.

【(4)】 (6) The term “Continental Shelf fishery resources” means the following:

【COLEENTERATA】 CNIDARIA

Bamboo Coral—*Acanella* spp.;
 Black Coral—*Antipathes* spp.;
 Gold Coral—*Callogorgia* spp.;
 Precious Red Coral—*Corallium* spp.;
 Bamboo Coral—*Keratoisis* spp.; and
 Gold Coral—*Parazoanthus* spp.

CRUSTACEA

Tanner Crab—*Chionoecetes tanneri*;
 Tanner Crab—*Chionoecetes opilio*;
 Tanner Crab—*Chionoecetes angulatus*;
 Tanner Crab—*Chionoecetes bairdi*;
 King Crab—*Paralithodes camtschatica*;
 King Crab—*Paralithodes platypus*;
 King Crab—*Paralithodes brevipes*;
 Lobster—*Homarus americanus*;
 Dungeness Crab—*Cancer magister*;
 California King Crab—*Paralithodes californiensis*;
 California King Crab—*Paralithodes rathbuni*;
 Golden King Crab—*Lithodes aequispinus*;
 Northern Stone Crab—*Lithodes maja*;
 Stone Crab—*Menippe mercenaria*; and
 【Deep-sea Red Crab—*Geryon quinquedens*.】
Deep-sea Red Crab—Chaceon quinquedens.

MOLLUSKS

Red Abalone—*Haliotis rufescens*;
 Pink Abalone—*Haliotis corrugata*;
 Japanese Abalone—*Haliotis kamtschatkana*;
 Queen Conch—*Strombus gigas*;
 Surf Clam—*Spisula solidissima*; and
 Ocean Quahog—*Arctica islandica*.

SPONGES

Glove Sponge—*Spongia cheiris*;
 Sheepswool Sponge—*Hippiospongia lachne*;
 Grass Sponge—*Spongia graminea*; and
 Yellow Sponge—*Spongia barbera*.

If the Secretary determines, after consultation with the Secretary of State, that living organisms of any other sedentary species are, at the harvestable stage, either—

(A) immobile on or under the seabed, or

(B) unable to move except in constant physical contact with the seabed or subsoil,

of the Continental Shelf which appertains to the United States, and publishes notice of such determination in the Federal Register, such sedentary species shall be considered to be added to the foregoing list and included in such term for purposes of this Act.

[(5)] (7) The term “Council” means any Regional Fishery Management Council established under section 302 [16 U.S.C. 1852].

(8) *The term “economic discards” means fish which are the target of a fishery, but which are not retained by a fishing vessel because they are of an undesirable size, sex, or quality, or for other economic reasons.*

(9) *The term “essential fish habitat” means those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity.*

[(6)] (10) The term “exclusive economic zone” means the zone established by Proclamation Numbered 5030, dated March 10, 1983. For purposes of applying this Act, the inner boundary of that zone is a line coterminous with the seaward boundary of each of the coastal States.

[(7)] (11) The term “fish” means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals, and birds.

[(8)] (12) The term “fishery” means—

(A) one or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics; and

(B) any fishing for such stocks.

[(9)] (13) The term “fishery resource” means any fishery, any stock of fish, any species of fish, and any habitat of fish.

[(10)] (14) The term “fishing” means—

(A) the catching, taking, or harvesting of fish;

(B) the attempted catching, taking, or harvesting of fish;

(C) any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(D) any operations at sea in support of, or in preparation for, any activity described in subparagraphs (A) through (C).

Such term does not include any scientific research activity which is conducted by a scientific research vessel.

(15) *The term “fishing community” means a community which is substantially dependent on the harvest of fishery resources to meet social and economic needs, and includes fishing vessel owners, operators and crew and United States fish processors that are based in such community.*

[(11)] (16) The term “fishing vessel” means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for—

(A) fishing; or

(B) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

[(12)] (17) The term “foreign fishing” means fishing by a vessel other than a vessel of the United States.

[(13)] (18) The term “high seas” means all waters beyond the territorial sea of the United States and beyond any foreign nation’s territorial sea, to the extent that such sea is recognized by the United States.

[(14)] (19) The term “highly migratory species” means tuna species, marlin (*Tetrapturus* spp. and *Makaira* spp.), oceanic sharks, sailfishes (*Istiophorus* spp.), and swordfish (*Xiphias gladius*).

(20) *The term “individual fishing quota” means a revocable Federal permit under a limited access system to harvest a quantity of fish that is expressed by a unit or units representing a percentage of the total allowable catch of a fishery that may be received or held for exclusive use by a person.*

[(15)] (21) The term “international fishery agreement” means any bilateral or multilateral treaty, convention, or agreement which relates to fishing and to which the United States is a party.

[(16)] (22) The term “large-scale driftnet fishing” means a method of fishing in which a gillnet composed of a panel or panels of webbing, or a series of such gillnets, with a total length [of one and one-half miles] *of two and one-half kilometers* or more is placed in the water and allowed to drift with the currents and winds for the purpose of entangling fish in the webbing.

[(17)] (23) The term “Marine Fisheries Commission” means the Atlantic States Marine Fisheries Commission, the Gulf States Marine Fisheries Commission, or the Pacific States Marine Fisheries Commission.

[(18)] (24) The term “migratory range” means the maximum area at a given time of the year within which fish of an anadromous species or stock thereof can be expected to be found, as determined on the basis of scale pattern analysis, tagging studies, or other reliable scientific information, except that the term does not include any part of such area which is in the waters of a foreign nation.

[(19)] (25) The term “national standards” means the national standards for fishery conservation and management set forth in section 301 [16 U.S.C. 1851].

[(20)] (26) The term “observer” means any person required or authorized to be carried on a vessel for conservation and management purposes by regulations or permits under this Act.

[(21)] (27) The term “optimum”, with respect to the yield from a fishery, means the amount of fish—

[(A) which will provide the greatest overall benefit to the Nation, with particular reference to food production and recreational opportunities; and

[(B) which is prescribed as such on the basis of the maximum sustainable yield from such fishery, as modified by any relevant economic, social, or ecological factor.]

(27) *The term “optimum”, with respect to the yield from a fishery, means the amount of fish which—*

(A) will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems;

(B) is prescribed on the basis of the maximum sustainable yield from the fishery, as reduced by any relevant social, economic, or ecological factor; and

(C) in the case of an overfished fishery, provides for rebuilding to a level consistent with producing the maximum sustainable yield in such fishery.

(28) *The terms “overfishing” and “overfished” mean a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis.*

(29) The term “Pacific Insular Area” means American Samoa, Guam, the Northern Mariana Islands, Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Island, Wake Island, or Palmyra Atoll, as applicable, and includes all islands and reefs appurtenant to such island, reef, or atoll.

[(22)] (30) The term “person” means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

(31) *The term “recreational fishing” means fishing for sport or pleasure.*

(32) *The term “regulatory discards” means fish caught in a fishery which fishermen are required by regulation to discard whenever caught, or are required by regulation to retain but not sell.*

[(23)] (33) The term “Secretary” means the Secretary of Commerce or his designee.

(34) *The term “special areas” means the areas referred to as eastern special areas in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990; in particular, the term refers to those areas east of the maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of Russia is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured.*

[(24)] (35) The term “special areas” means the areas referred to as eastern special areas in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990; in particular, the term refers to those areas east

of the maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of Russia is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured.

[(25)] (36) The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and any other Commonwealth, territory, or possession of the United States.

[(26)] (37) The term “stock of fish” means a species, subspecies, geographical grouping, or other category of fish capable of management as a unit.

[(27)] (38) The term “treaty” means any international fishery agreement which is a treaty within the meaning of section 2 of article II of the Constitution.

[(28)] (39) The term “tuna species” means the following:

Albacore Tuna—*Thunnus alalunga*;
Bigeye Tuna—*Thunnus obesus*;
Bluefin Tuna—*Thunnus thynnus*;
Skipjack Tuna—*Katsuwonus pelamis*; and
Yellowfin Tuna—*Thunnus albacares*.

[(29)] (40) The term “United States”, when used in a geographical context, means all the States thereof.

[(30)] (41) The term “United States fish processors” means facilities located within the United States for, and vessels of the United States used or equipped for, the processing of fish for commercial use or consumption.

[(31)] (42) The term “United States harvested fish” means fish caught, taken, or harvested by vessels of the United States within any fishery [for which a fishery management plan prepared under title III [16 U.S.C. 1851 et seq.] or a preliminary fishery management plan prepared under section 201(h) [16 U.S.C. 1821(h)] has been implemented.] *regulated under this Act*.

(43) *The term “vessel subject to the jurisdiction of the United States” has the same meaning such term has in section 3(c) of the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1903(c)).*

[(32)] (44) The term “vessel of the United States” means—

(A) any vessel documented under chapter 121 of title 46 [46 U.S.C. 12101 et seq.], United States Code;

(B) any vessel numbered in accordance with chapter 123 of title 46 [46 U.S.C. 12301 et seq.], United States Code, and measuring less than 5 net tons;

(C) any vessel numbered in accordance with chapter 123 of title 46 [46 U.S.C. 12301 et seq.], United States Code, and used exclusively for pleasure; or

(D) any vessel not equipped with propulsion machinery of any kind and used exclusively for pleasure.

[(33)] (45) The term “waters of a foreign nation” means any part of the territorial sea or exclusive economic zone (or the equivalent) of a foreign nation, to the extent such territorial

sea or exclusive economic zone is recognized by the United States.

§ 1803. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary for the purposes of carrying out the provisions of this Act, not to exceed the following sums (of which not less than 10 percent in each fiscal year shall be used for enforcement activities):

- (1) \$147,000,000 for fiscal year 1996;
- (2) \$151,000,000 for fiscal year 1997;
- (3) \$155,000,000 for fiscal year 1998;
- (4) \$159,000,000 for fiscal year 1999; and
- (5) \$163,000,000 for fiscal year 2000.

**UNITED STATES RIGHTS AND AUTHORITY REGARDING
FISH AND FISHERY RESOURCES**

§ 1812. Highly migratory species

The United States shall cooperate directly or through appropriate international organizations with those nations involved in fisheries for highly migratory species with a view to ensuring conservation and **[promoting the objective of optimum utilization]** *shall promote the achievement of optimum yield* of such species throughout their range, both within and beyond the exclusive economic zone.

§ 1821. Foreign fishing

(a) **IN GENERAL.**—After February 28, 1977, no foreign fishing is authorized within the exclusive economic zone, within the special areas, or for anadromous species or Continental Shelf fishery resources beyond such zone or areas, unless such foreign fishing—

[(1) is authorized under subsection (b) or (c);**]**

(1) is authorized under subsections (b) or (c) or section 204(e), under a permit issued under section 204(d);

(2) is not prohibited by subsection (g); and

(3) is conducted under, and in accordance with, a valid and applicable permit issued pursuant to section 204 [16 U.S.C. 1824].

(b) **EXISTING INTERNATIONAL FISHERY AGREEMENTS.**—Foreign fishing described in subsection (a) may be conducted pursuant to an international fishery agreement (subject to the provisions of section 202(b) or (c) [16 U.S.C. 1822(b) or (c)], if such agreement—

(1) was in effect on the date of enactment of this Act; and

(2) has not expired, been renegotiated, or otherwise ceased to be of force and effect with respect to the United States.

(c) **GOVERNING INTERNATIONAL FISHERY AGREEMENTS.**—

Foreign fishing described in subsection (a) may be conducted pursuant to an international fishery agreement (other than a treaty) which meets the requirements of this subsection if such agreement becomes effective after application of section 203 [16 U.S.C. 1823]. Any such international fishery agreement shall hereafter in this Act be referred to as a “governing international fishery agreement”. Each governing international fishery agreement shall acknowledge the exclusive fishery management authority of the United States, as set forth in this Act. It is

the sense of the Congress that each such agreement shall include a binding commitment, on the part of such foreign nation and its fishing vessels, to comply with the following terms and conditions:

(1) The foreign nation, and the owner or operator of any fishing vessel fishing pursuant to such agreement, will abide by all regulations promulgated by the Secretary pursuant to this Act, including any regulations promulgated to implement any applicable fishery management plan or any preliminary fishery management plan.

(2) The foreign nation, and the owner or operator of any fishing vessel fishing pursuant to such agreement, will abide by the requirement that—

(A) any officer authorized to enforce the provisions of this Act (as provided for in section 311 [16 U.S.C. 1861]) be permitted—

(i) to board, and search or inspect, any such vessel at any time,

(ii) to make arrests and seizures provided for in section 311(b) [16 U.S.C. 1861(b)] whenever such officer has reasonable cause to believe, as a result of such a search or inspection, that any such vessel or any person has committed an act prohibited by section 307 [16 U.S.C. 1857], and

(iii) to examine and make notations on the permit issued pursuant to section 204 [16 U.S.C. 1824] for such vessel;

(B) the permit issued for any such vessel pursuant to section 204 [16 U.S.C. 1824] be prominently displayed in the wheelhouse of such vessel;

(C) transponders, or such other appropriate position-fixing and identification equipment as the Secretary of the department in which the Coast Guard is operating determines to be appropriate, be installed and maintained in working order on each such vessel;

(D) United States observers required under subsection (i) be permitted to be stationed aboard any such vessel and that all of the costs incurred incident to such stationing, including the costs of data editing and entry and observer monitoring, be paid for, in accordance with such subsection, by the owner or operator of the vessel;

(E) any fees required under section 204(b)(10) [16 U.S.C. 1824(b)(10)] be paid in advance;

(F) agents be appointed and maintained within the United States who are authorized to receive and respond to any legal process issued in the United States with respect to such owner or operator; and

(G) responsibility be assumed, in accordance with any requirements prescribed by the Secretary, for the reimbursement of United States citizens for any loss of, or damage to, their fishing vessels, fishing gear, or catch which is caused by any fishing vessel of that nation;

and will abide by any other monitoring, compliance, or enforcement requirement related to fishery conservation and management which is included in such agreement.

(3) The foreign nation and the owners or operators of all of the fishing vessels of such nation shall not, in any year, harvest an amount of fish which exceeds such nation's allocation of the total allowable level of foreign fishing, as determined under subsection (e).

(4) The foreign nation will—

(A) apply, pursuant to section 204 [16 U.S.C. 1824], for any required permits;

(B) deliver promptly to the owner or operator of the appropriate fishing vessel any permit which is issued under that section [16 U.S.C. 1824] for such vessel;

(C) abide by, and take appropriate steps under its own laws to assure that all such owners and operators comply with, section 204(a) [16 U.S.C. 1824(a)] and the applicable conditions and restrictions established under section 204(b)(7) [16 U.S.C. 1824(b)(7)]; and

(D) take, or refrain from taking, as appropriate, actions of the kind referred to in subsection (e)(1) in order to receive favorable allocations under such subsection.

(d) **TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING.**—The total allowable level of foreign fishing, if any, with respect to any fishery subject to the exclusive fishery management authority of the United States, shall be that portion of the optimum yield of such fishery which will not be harvested by vessels of the United States, as determined in accordance with this Act.

(e) **ALLOCATION OF ALLOWABLE LEVEL.**—

(1)(A) The Secretary of State, in cooperation with the Secretary, may make allocations to foreign nations from the total allowable level of foreign fishing which is permitted with respect to each fishery subject to the exclusive fishery management authority of the United States.

(B) From the determinations made under subparagraph (A), the Secretary of State shall compute the aggregate of all of the fishery allocations made to each foreign nation.

(C) The Secretary of State shall initially release to each foreign nation for harvesting up to 50 percent of the allocations aggregate computed for such nation under subparagraph (B), and such release of allocation shall be apportioned by the Secretary of State, in cooperation with the Secretary, among the individual fishery allocations determined for that nation under subparagraph (A). The basis on which each apportionment is made under this subparagraph shall be stated in writing by the Secretary of State.

(D) After the initial release of fishery allocations under subparagraph (C) to a foreign nation, any subsequent release of an allocation for any fishery to such nation shall only be made—

(i) after the lapse of such period of time as may be sufficient for purposes of making the determination required under clause (ii); and

(ii) if the Secretary of State and the Secretary, after taking into account the size of the allocation for such fishery

and the length and timing of the fishing season, determine in writing that such nation is complying with the purposes and intent of this paragraph with respect to such fishery.

If the foreign nation is not determined under clause (ii) to be in such compliance, the Secretary of State shall reduce, in a manner and quantity he considers to be appropriate (I) the remainder of such allocation, or (II) if all of such allocation has been released, the next allocation of such fishery, if any, made to such nation.

(E) The determinations required to be made under subparagraphs (A) and (D)(ii), and the apportionments required to be made under subparagraph (C), with respect to a foreign nation shall be based on—

(i) whether, and to what extent, such nation imposes tariff barriers or nontariff barriers on the importation, or otherwise restricts the market access, of both United States fish and fishery products, particularly fish and fishery products for which the foreign nation has requested an allocation;

(ii) whether, and to what extent, such nation is cooperating with the United States in both the advancement of existing and new opportunities for fisheries exports from the United States through the purchase of fishery products from United States processors, and the advancement of fisheries trade through the purchase of fish and fishery products from United States fishermen, particularly fish and fishery products for which the foreign nation has requested an allocation;

(iii) whether, and to what extent, such nation and the fishing fleets of such nation have cooperated with the United States in the enforcement of United States fishing regulations;

(iv) whether, and to what extent, such nation requires the fish harvested from the exclusive economic zone or special areas for its domestic consumption;

(v) whether, and to what extent, such nation otherwise contributes to, or fosters the growth of, a sound and economic United States fishing industry, including minimizing gear conflicts with fishing operations of United States fishermen, and transferring harvesting or processing technology which will benefit the United States fishing industry;

(vi) whether, and to what extent, the fishing vessels of such nation have traditionally engaged in fishing in such fishery;

(vii) whether, and to what extent, such nation is cooperating with the United States in, and making substantial contributions to, fishery research and the identification of fishery resources; and

(viii) such other matters as the Secretary of State, in cooperation with the Secretary, deems appropriate.

(2)(A) For the purposes of this paragraph—

(i) The term “certification” means a certification made by the Secretary that nationals of a foreign

country, directly or indirectly, are conducting fishing operations or engaging in trade or taking which diminishes the effectiveness of the International Convention for the Regulation of Whaling. A certification under this section shall also be deemed a certification for the purposes of section 8(a) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(a)).

(ii) The term "remedial period" means the 365-day period beginning on the date on which a certification is issued with respect to a foreign country.

(B) If the Secretary issues a certification with respect to any foreign country, then each allocation under paragraph (1) that—

(i) is in effect for that foreign country on the date of issuance; or

(ii) is not in effect on such date but would, without regard to this paragraph, be made to the foreign country within the remedial period; shall be reduced by the Secretary of State, in consultation with the Secretary, by not less than 50 percent.

(C) The following apply for purposes of administering subparagraph (B) with respect to any foreign country:

(i) If on the date of certification, the foreign country has harvested a portion, but not all, of the quantity of fish specified under any allocation, the reduction under subparagraph (B) for that allocation shall be applied with respect to the quantity not harvested as of such date.

(ii) If the Secretary notified the Secretary of State that it is not likely that the certification of the foreign country will be terminated under section 8(d) of the Fishermen's Protective Act of 1967 [22 U.S.C. 1978(d)] before the close of the period for which an allocation is applicable or before the close of the remedial period (whichever close first occurs) the Secretary of State, in consultation with the Secretary, shall reallocate any portion of any reduction made under subparagraph (B) among one or more foreign countries for which no certification is in effect.

(iii) If the certification is terminated under such section 8(d) [22 U.S.C. 1978(d)] during the remedial period, the Secretary of State shall return to the foreign country that portion of any allocation reduced under subparagraph (B) that was not reallocated under clause (ii); unless the harvesting of the fish covered by the allocation is otherwise prohibited under this Act.

(iv) The Secretary may refund or credit, by reason of reduction of any allocation under this paragraph, any fee paid under section 204 [16 U.S.C. 1824].

(D) If the certification of a foreign country is not terminated under section 8(d) of the Fishermen's Protective Act of 1967 [22 U.S.C. 1978(d)] before the close of the last day of the remedial period, the Secretary of State—

(i) with respect to any allocation made to that country and in effect (as reduced under subparagraph (B)) on such last day, shall rescind, effective on and after the day after such last day, any harvested portion of such allocation; and

(ii) may not thereafter make any allocation to that country under paragraph (1) until the certification is terminated.

(f) [Repealed]

(g) RECIPROCITY.—Foreign fishing shall not be authorized for the fishing vessels of any foreign nation unless such nation satisfies the Secretary and the Secretary of State that such nation extends substantially the same fishing privileges to fishing vessels of the United States, if any, as the United States extends to foreign fishing vessels.

(h) PRELIMINARY FISHERY MANAGEMENT PLANS.—The Secretary, when notified by the Secretary of State that any foreign nation has submitted an application under section 204(b) [16 U.S.C. 1824(b)], shall prepare a preliminary fishery management plan for any fishery covered by such application if the Secretary determines that no fishery management plan for that fishery will be prepared and implemented, pursuant to title III [16 U.S.C. 1851 et seq.], before March 1, 1977. To the extent practicable, each such plan—

(1) shall contain a preliminary description of the fishery and a preliminary determination as to—

(A) the optimum yield from such fishery;

(B) when appropriate, the capacity and extent to which United States fish processors will process that portion of such optimum yield that will be harvested by vessels of the United States; and

(C) the total allowable level of foreign fishing with respect to such fishery;

(2) shall require each foreign fishing vessel engaged or wishing to engage in such fishery to obtain a permit from the Secretary;

(3) shall require the submission of pertinent data to the Secretary, with respect to such fishery, as described in section 303(a)(5) [16 U.S.C. 1853(a)(5)]; and

(4) may, to the extent necessary to prevent irreversible effects from overfishing, with respect to such fishery, contain conservation and management measures applicable to foreign fishing which—

(A) are determined to be necessary and appropriate for the conservation and management of such fishery,

(B) are consistent with the national standards, the other provisions of this Act, and other applicable law, and

(C) are described in section 303(b)(2), (3), (4), (5), and (7) [16 U.S.C. 1853(b)(2)-(5), (7)].

Each preliminary fishery management plan shall be in effect with respect to foreign fishing for which permits have been issued until a fishery management plan is prepared and implemented, pursuant to title III [16 U.S.C. 1851 et seq.], with respect to such fishery. The Secretary may, in accordance with section 553 of title 5, United States Code, also prepare and

promulgate interim regulations with respect to any such preliminary plan. Such regulations shall be in effect until regulations implementing the applicable fishery management plan are promulgated pursuant to section 305 [16 U.S.C. 1855].

(i) FULL OBSERVER COVERAGE PROGRAM.—

(1)(A) Except as provided in paragraph (2), the Secretary shall establish a program under which a United States observer will be stationed aboard each foreign fishing vessel while that vessel is engaged in fishing within the exclusive economic zone or special areas.

(B) The Secretary shall by regulation prescribe minimum health and safety standards that shall be maintained aboard each foreign fishing vessel with regard to the facilities provided for the quartering of, and the carrying out of observer functions by, United States observers.

(2) The requirement in paragraph (1) that a United States observer be placed aboard each foreign fishing vessel may be waived by the Secretary if he finds that—

(A) in a situation where a fleet of harvesting vessels transfers its catch taken within the exclusive economic zone or special areas to another vessel, aboard which is a United States observer, the stationing of United States observers on only a portion of the harvesting vessel fleet will provide a representative sampling of the by-catch of the fleet that is sufficient for purposes of determining whether the requirements of the applicable management plans for the by-catch species are being complied with;

(B) the time during which a foreign fishing vessel will engage in fishing within the exclusive economic zone or special areas will be of such short duration that the placing of a United States observer aboard the vessel would be impractical; or

(i) the time during which the vessel engages in such fishing will be of such short duration that the placing of a United States observer aboard the vessel would be impractical, or

(ii) the facilities of the vessel for the quartering of a United States observer, or for the carrying out of observer functions, are so inadequate or unsafe that the health or safety of an observer would be jeopardized;

or

(C) for reasons beyond the control of the Secretary, an observer is not available.

(3) Observers, while stationed aboard foreign fishing vessels, shall carry out such scientific, compliance monitoring, and other functions as the Secretary deems necessary or appropriate to carry out the purposes of this Act; and shall cooperate in carrying out such other scientific programs relating to the conservation and management of living resources as the Secretary deems appropriate.

(4) In addition to any fee imposed under section 204(b)(10) of this Act [16 U.S.C. 1824(b)(10)] and section 10(e) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1980(e)) with respect to foreign fishing for any year after 1980, the Secretary shall

impose, with respect to each foreign fishing vessel for which a permit is issued under such section 204 [16 U.S.C. 1824], a surcharge in an amount sufficient to cover all the costs of providing a United States observer aboard that vessel. The failure to pay any surcharge imposed under this paragraph shall be treated by the Secretary as a failure to pay the permit fee for such vessel under section 204(b)(10) [16 U.S.C. 1824(b)(10)]. All surcharges collected by the Secretary under this paragraph shall be deposited in the Foreign Fishing Observer Fund established by paragraph (5).

(5) There is established in the Treasury of the United States the Foreign Fishing Observer Fund. The Fund shall be available to the Secretary as a revolving fund for the purpose of carrying out this subsection. The Fund shall consist of the surcharges deposited into it as required under paragraph (4). All payments made by the Secretary to carry out this subsection shall be paid from the Fund, only to the extent and in the amounts provided for in advance in appropriation Acts. Sums in the Fund which are not currently needed for the purposes of this subsection shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

(6) If at any time the requirement set forth in paragraph (1) cannot be met because of insufficient appropriations, the Secretary shall, in implementing a supplementary observer program:

(A) certify as observers, for the purposes of this subsection, individuals who are citizens or nationals of the United States and who have the requisite education or experience to carry out the functions referred to in paragraph (3);

(B) establish standards of conduct for certified observers equivalent to those applicable to Federal personnel;

(C) establish a reasonable schedule of fees that certified observers or their agents shall be paid by the owners and operators of foreign fishing vessels for observer services; and

(D) monitor the performance of observers to ensure that it meets the purposes of this Act.

(j) RECREATIONAL FISHING.—Notwithstanding any other provision of this title [16 U.S.C. 1821 et seq.], foreign fishing vessels which are not operated for profit may engage in recreational fishing within the exclusive economic zone, special areas, and the waters within the boundaries of a State subject to obtaining such permits, paying such reasonable fees, and complying with such conditions and restrictions as the Secretary and the Governor of the State (or his designee) shall impose as being necessary or appropriate to insure that the fishing activity of such foreign vessels within such zone, areas, or waters, respectively, is consistent with all applicable Federal and State laws and any applicable fishery management plan implemented under section 305 [16 U.S.C. 1855]. The Secretary shall consult with the Secretary of State and the Secretary of the Department in which the Coast Guard is operating in formulating the conditions and restrictions to be applied by the Secretary under the authority of this subsection.

§ 1822. International fishery agreements

(a) NEGOTIATIONS.—The Secretary of State—

(1) shall renegotiate treaties as provided for in subsection (b);

(2) shall negotiate governing international fishery agreements described in section 201(c) [16 U.S.C. 1821(c)];

(3) may negotiate boundary agreements as provided for in subsection (d);

(4) shall, upon the request of and in cooperation with the Secretary, initiate and conduct negotiations for the purpose of entering into international fishery agreements—

(A) which allow fishing vessels of the United States equitable access to fish over which foreign nations assert exclusive fishery management authority, and

(B) which provide for the conservation and management of anadromous species and highly migratory species; and

(5) may enter into such other negotiations, not prohibited by subsection (c), as may be necessary and appropriate to further the purposes, policy, and provisions of this Act.

(b) TREATY RENEGOTIATION.—The Secretary of State, in cooperation with the Secretary, shall initiate, promptly after the date of enactment of this Act, the renegotiation of any treaty which pertains to fishing within the exclusive economic zone (or within the area that will constitute such zone after February 28, 1977) or special areas, or for anadromous species or Continental Shelf fishery resources beyond such zone or areas, and which is in any manner inconsistent with the purposes, policy, or provisions of this Act, in order to conform such treaty to such purposes, policy, and provisions. It is the sense of Congress that the United States shall withdraw from any such treaty, in accordance with its provisions, if such treaty is not so renegotiated within a reasonable period of time after such date of enactment.

(c) INTERNATIONAL FISHERY AGREEMENTS.—No international fishery agreement (other than a treaty) which pertains to foreign fishing within the exclusive economic zone (or within the area that will constitute such zone after February 28, 1977) or special areas, or for anadromous species or Continental Shelf fishery resources beyond such zone or areas—

(1) which is in effect on June 1, 1976, may thereafter be renewed, extended, or amended; or

(2) may be entered into after May 31, 1976;

by the United States unless it is in accordance with the provisions of section 201(c) [16 U.S.C. 1821(c)] or section 204(e).

(d) BOUNDARY NEGOTIATIONS.—The Secretary of State, in cooperation with the Secretary, may initiate and conduct negotiations with any adjacent or opposite foreign nation to establish the boundaries of the exclusive economic zone of the United States in relation to any such nation.

(e) HIGHLY MIGRATORY SPECIES AGREEMENTS.—

(1) EVALUATION.—The Secretary of State, in cooperation with the Secretary, shall evaluate the effectiveness of each existing international fishery agreement which pertains to fishing for highly migratory species. Such evaluation shall consider whether the agreement provides for—

(A) the collection and analysis of necessary information for effectively managing the fishery, including but not limited to information about the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the catch and bycatch levels in the fishery, and the present and probable future condition of any stock of fish involved;

(B) the establishment of measures applicable to the fishery which are necessary and appropriate for the conservation and management of the fishery resource involved;

(C) equitable arrangements which provide fishing vessels of the United States with (i) access to the highly migratory species that are the subject of the agreement and (ii) a portion of the allowable catch that reflects the traditional participation by such vessels in the fishery;

(D) effective enforcement of conservation and management measures and access arrangements throughout the area of jurisdiction; and

(E) sufficient and dependable funding to implement the provisions of the agreement, based on reasonable assessments of the benefits derived by participating nations.

(2) ACCESS NEGOTIATIONS.—The Secretary of State, in cooperation with the Secretary, shall initiate negotiations with respect to obtaining access for vessels of the United States fishing for tuna species within the exclusive economic zones of other nations on reasonable terms and conditions.

(3) REPORTS.—The Secretary of State shall report to the Congress—

(A) within 12 months after the date of enactment of this subsection, on the results of the evaluation required under paragraph (1), together with recommendations for addressing any inadequacies identified; and

(B) within six months after such date of enactment, on the results of the access negotiations required under paragraph (2).

(4) NEGOTIATION.—The Secretary of State, in consultation with the Secretary, shall undertake such negotiations with respect to international fishery agreements on highly migratory species as are necessary to correct inadequacies identified as a result of the evaluation conducted under paragraph (1).

(5) SOUTH PACIFIC TUNA TREATY.—It is the sense of the Congress that the United States Government shall, at the earliest opportunity, begin negotiations for the purpose of extending the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America, signed at Port Moresby, Papua, New Guinea, April 2, 1987, and its Annexes, Schedules, and implementing agreements for an additional term of 10 years on terms and conditions at least as favorable to vessels of the United States and the United States Government.

(f) NONRECOGNITION.—It is the sense of the Congress that the United States Government shall not recognize the claim of any foreign nation to an exclusive economic zone (or the equivalent) be-

yond such nation's territorial sea, to the extent that such sea is recognized by the United States, if such nation—

(1) fails to consider and take into account traditional fishing activity of fishing vessels of the United States;

(2) fails to recognize and accept that highly migratory species are to be managed by applicable international fishery agreements, whether or not such nation is a party to any such agreement; or

(3) imposes on fishing vessels of the United States any conditions or restrictions which are unrelated to fishery conservation and management.

(g) FISHERY AGREEMENT WITH UNION OF SOVIET SOCIALIST REPUBLICS.

(1) The Secretary of State, in consultation with the Secretary, is authorized to negotiate and conclude a fishery agreement with Russia of a duration of no more than 3 years, pursuant to which—

(A) Russia will give United States fishing vessels the opportunity to conduct traditional fisheries within waters claimed by the United States prior to the conclusion of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, west of the maritime boundary, including the western special area described in Article 3(2) of the Agreement;

(B) the United States will give fishing vessels of Russia the opportunity to conduct traditional fisheries within waters claimed by the Union of Soviet Socialist Republics prior to the conclusion of the Agreement referred to in subparagraph (A), east of the Maritime Boundary, including the eastern special areas described in Article 3(1) of the Agreement;

(C) catch data shall be made available to the government of the country exercising fisheries jurisdiction over the waters in which the catch occurred; and

(D) each country shall have the right to place observers on board vessels of the other country and to board and inspect such vessels.

(2) Vessels operating under a fishery agreement negotiated and concluded pursuant to paragraph (1) shall be subject to regulations and permit requirements of the country in whose waters the fisheries are conducted only to the extent such regulations and permit requirements are specified in that agreement.

(3) The Secretary of Commerce may promulgate such regulations, in accordance with section 553 of title 5, United States Code, as may be necessary to carry out the provisions of any fishery agreement negotiated and concluded pursuant to paragraph (1).

(h) *BYCATCH REDUCTION AGREEMENTS.*—(1) *The Secretary of State, in cooperation with the Secretary, shall seek to secure an international agreement to establish standards and measures for bycatch reduction that are comparable to the standards and measures applicable to United States fishermen for such purposes in any*

fishery regulated pursuant to this Act for which the Secretary, in consultation with the Secretary of State, determines that such an international agreement is necessary and appropriate.

(2) An international agreement negotiated under this subsection shall be—

(A) consistent with the policies and purposes of this Act; and

(B) approved by Congress in the manner established in section 203 for approval of a governing international fishery agreement.

(3) Not later than January 1, 1997, and annually thereafter, the Secretary, in consultation with the Secretary of State, shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives a report describing actions taken under this subsection and section 205(a)(5).

§ 1823. Congressional oversight of governing international fishery agreements

(a) IN GENERAL.—No governing international fishery agreement shall become effective with respect to the United States before the close of the first [60 calendar days of continuous session of the Congress] 120 days (excluding any days in a period for which the Congress is adjourned sine die) after the date on which the President transmits to the House of Representatives and to the Senate a document setting forth the text of such governing international fishery agreement. A copy of the document shall be delivered to each House of Congress on the same day and shall be delivered to the Clerk of the House of Representatives, if the House is not in session, and to the Secretary of the Senate, if the Senate is not in session.

(b) REFERRAL TO COMMITTEES.—Any document described in subsection (a) shall be immediately referred in the House of Representatives to the Committee on Merchant Marine and Fisheries, and in the Senate to the Committees on Commerce, Science, and Transportation and on Foreign Relations.

[(c) COMPUTATION OF 60-DAY PERIOD. For purposes of subsection (a)—

[(1) continuity of session is broken only by an adjournment of Congress sine die; and

[(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 60-day period.]

[(d)] (c) CONGRESSIONAL PROCEDURES.—

(1) RULES OF THE HOUSE OF REPRESENTATIVES AND SENATE.—The provisions of this section are enacted by the Congress—

(A) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of fishery agreement resolutions described in paragraph (2), and they supersede other rules only to the extent that they are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as they relate to the

procedure of that House) at any time, and in the same manner and to the same extent as in the case of any other rule of that House.

(2) "FISHERY AGREEMENT RESOLUTION" DEFINED.—For purposes of this subsection, the term "fishery agreement resolution" refers to a joint resolution of either House of Congress—

(A) the effect of which is to prohibit the entering into force and effect of any governing international fishery agreement the text of which is transmitted to the Congress pursuant to subsection (a); and

(B) which is reported from the Committee on Merchant Marine and Fisheries of the House of Representatives or the Committee on Commerce, Science, and Transportation or the Committee on Foreign Relations of the Senate, not later than 45 days after the date on which the document described in subsection (a) relating to that agreement is transmitted to the Congress.

(3) PLACEMENT ON CALENDAR.—Any fishery agreement resolution upon being reported shall immediately be placed on the appropriate calendar.

(4) FLOOR CONSIDERATION IN THE HOUSE.—

(A) A motion in the House of Representatives to proceed to the consideration of any fishery agreement resolution shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(B) Debate in the House of Representatives on any fishery agreement resolution shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate shall not be debatable. It shall not be in order to move to recommit any fishery agreement resolution or to move to reconsider the vote by which any fishery agreement resolution is agreed to or disagreed to.

(C) Motions to postpone, made in the House of Representatives with respect to the consideration of any fishery agreement resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(D) All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to any fishery agreement resolution shall be decided without debate.

(E) Except to the extent specifically provided in the preceding provisions of this subsection, consideration of any fishery agreement resolution shall be governed by the Rules of the House of Representatives applicable to other bills and resolutions in similar circumstances.

(5) FLOOR CONSIDERATION IN THE SENATE.—

(A) A motion in the Senate to proceed to the consideration of any fishery agreement resolution shall be privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to

reconsider the vote by which the motion is agreed to or disagreed to.

(B) Debate in the Senate on any fishery agreement resolution and on all debatable motions and appeals in connection therewith shall be limited to not more than 10 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(C) Debate in the Senate on any debatable motion or appeal in connection with any fishery agreement resolution shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover of the motion or appeal and the manager of the resolution, except that if the manager of the resolution is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. The majority leader and the minority leader, or either of them, may allot additional time to any Senator during the consideration of any debatable motion or appeal, from time under their control with respect to the applicable fishery agreement resolution.

(D) A motion in the Senate to further limit debate is not debatable.—A motion to recommit any fishery agreement resolution is not in order.

§ 1824. Permits for foreign fishing

(a) IN GENERAL.—After February 28, 1977, no foreign fishing vessel shall engage in fishing within the exclusive economic zone, within the special areas, or for anadromous species or Continental Shelf fishery resources beyond such zone or areas, unless such vessel has on board a valid permit issued under this section for such vessel.

(b) APPLICATIONS AND PERMITS UNDER GOVERNING INTERNATIONAL FISHERY AGREEMENTS.—

(1) ELIGIBILITY.—Each foreign nation with which the United States has entered into a governing international fishery agreement shall submit an application to the Secretary of State each year for a permit for each of its fishing vessels that wishes to engage in fishing described in subsection (a). No permit issued under this section may be valid for longer than a year; and section 558(c) of title 5, United States Code, does not apply to the renewal of any such permit.

(2) FORMS.—The Secretary, in consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall prescribe the forms for permit applications submitted under this subsection and for permits issued pursuant to any such application.

(3) CONTENTS.—Any application made under this subsection shall specify—

(A) the name and official number or other identification of each fishing vessel for which a permit is sought, together with the name and address of the owner thereof;

(B) the tonnage, hold capacity, speed, processing equipment, type and quantity of fishing gear, and such other

pertinent information with respect to characteristics of each such vessel as the Secretary may require;

(C) each fishery in which each such vessel wishes to fish;

(D) the estimated amount of tonnage of fish which will be caught, taken, or harvested in each such fishery by each such vessel during the time the permit is in force;

(E) the amount or tonnage of United States harvested fish, if any, which each such vessel proposes to receive at sea from vessels of the United States;

(F) the ocean area in which, and the season or period during which, such fishing will be conducted; and

(G) all applicable vessel safety standards imposed by the foreign country, and shall include written certification that the vessel is in compliance with those standards;

and shall include any other pertinent information and material which the Secretary may require.

(4) TRANSMITTAL FOR ACTION.—Upon receipt of any application which complies with the requirements of paragraph (3), the Secretary of State shall publish a notice of receipt of the application in the Federal Register. Any such notice shall summarize the contents of the applications from each nation included therein with respect to the matters described in paragraph (3). The Secretary of State shall promptly transmit—

(A) such application, together with his comments and recommendations thereon, to the Secretary;

(B) a copy of the application to the Secretary of the department in which the Coast Guard is operating; and

(C) a copy or a summary of the application to the appropriate Council.

(5) ACTION BY COUNCIL.—After receiving a copy or summary of an application under paragraph (4)(C), the Council may prepare and submit to the Secretary such written comments on the application as it deems appropriate. Such comments shall be submitted within 45 days after the date on which the application is received by the Council and may include recommendations with respect to approval of the application and, if approval is recommended, with respect to appropriate conditions and restrictions thereon. Any interested person may submit comments to such Council with respect to any such application. The Council shall consider any such comments in formulating its submission to the Secretary.

(6) APPROVAL.—

(A) After receipt of any application transmitted under paragraph (4)(A), the Secretary shall consult with the Secretary of State and, with respect to enforcement, with the Secretary of the department in which the Coast Guard is operating. The Secretary, after taking into consideration the views and recommendations of such Secretaries, and any comments submitted by any Council under paragraph (5), may approve, subject to subparagraph (B), the application, if he determines that the fishing described in the application will meet the requirements of this Act, or he may disapprove all or any portion of the application.

(B)(i) In the case of any application which specifies that one or more foreign fishing vessels propose to receive at sea United States harvested fish from vessels of the United States, the Secretary may approve the application unless the Secretary determines, on the basis of the views, recommendations, and comments referred to in subparagraph (A) and other pertinent information, that United States fish processors have adequate capacity, and will utilize such capacity, to process all United States harvested fish from the fishery concerned.

(ii) The amount or tonnage of United States harvested fish which may be received at sea during any year by foreign fishing vessels under permits approved under this paragraph may not exceed that portion of the optimum yield of the fishery concerned which will not be utilized by United States fish processors.

(iii) In deciding whether to approve any application under this subparagraph, the Secretary may take into account, with respect to the foreign nation concerned, such other matters as the Secretary deems appropriate.

(7) ESTABLISHMENT OF CONDITIONS AND RESTRICTIONS.—The Secretary shall establish conditions and restrictions which shall be included in each permit issued pursuant to any application approved under paragraph (6) and which must be complied with by the owner or operator of the fishing vessel for which the permit is issued. Such conditions and restrictions shall include the following:

(A) All of the requirements of any applicable fishery management plan, or preliminary fishery management plan, and the regulations promulgated to implement any such plan.

(B) The requirement that no permit may be used by any vessel other than the fishing vessel for which it is issued.

(C) The requirements described in section 201(c)(1), (2), and (3) [16 U.S.C. 1821(c)(1), (2), and (3)].

(D) If the permit is issued other than pursuant to an application approved under paragraph (6)(B), the restriction that the foreign fishing vessel may not receive at sea United States harvested fish from vessels of the United States.

(E) If the permit is issued pursuant to an application approved under paragraph (6)(B), the maximum amount or tonnage of United States harvested fish which may be received at sea from vessels of the United States.

(F) Any other condition and restriction related to fishery conservation and management which the Secretary prescribes as necessary and appropriate.

(8) NOTICE OF APPROVAL.—The Secretary shall promptly transmit a copy of each application approved under paragraph (6) and the conditions and restrictions established under paragraph (7) to—

(A) the Secretary of State for transmittal to the foreign nation involved;

(B) the Secretary of the department in which the Coast Guard is operating; and

(C) any Council which has authority over any fishery specified in such application.

(9) **DISAPPROVAL OF APPLICATIONS.**—If the Secretary does not approve any application submitted by a foreign nation under this subsection, he shall promptly inform the Secretary of State of the disapproval and his reasons therefore. The Secretary of State shall notify such foreign nation of the disapproval and the reasons therefor. Such foreign nation, after taking into consideration the reasons for disapproval, may submit a revised application under this subsection.

(10) **FEES.**—

(A) Fees shall be paid to the Secretary by the owner or operator of any foreign fishing vessel for which a permit has been issued pursuant to this section. The Secretary, in consultation with the Secretary of State, shall establish a schedule of reasonable fees that shall apply nondiscriminatorily to each foreign nation.

(B) Amounts collected by the Secretary under this paragraph shall be deposited in the general fund of the Treasury.

(11) **ISSUANCE OF PERMITS.**—If a foreign nation notifies the Secretary of State of its acceptance of the conditions and restrictions established by the Secretary under paragraph (7), the Secretary of State shall promptly transmit such notification to the Secretary. Upon payment of the applicable fees established pursuant to paragraph (10), the Secretary shall thereupon issue to such foreign nation, through the Secretary of State, permits for the appropriate fishing vessels of that nation. Each permit shall contain a statement of all conditions and restrictions established under paragraph (7) which apply to the fishing vessel for which the permit is issued.

(12) [Repealed]

(c) **REGISTRATION PERMITS.**—The Secretary of State, in cooperation with the Secretary, shall issue annually a registration permit for each fishing vessel of a foreign nation which is a party to an international fishery agreement under which foreign fishing is authorized by section 201(b) [16 U.S.C. 1821(b)] and which wishes to engage in fishing described in subsection (a). Each such permit shall set forth the terms and conditions contained in the agreement that apply with respect to such fishing, and shall include the additional requirement that the owner or operator of the fishing vessel for which the permit is issued shall prominently display such permit in the wheelhouse of such vessel and show it, upon request, to any officer authorized to enforce the provisions of this Act (as provided for in section 311 [16 U.S.C. 1861]). The Secretary of State, after consultation with the Secretary and the Secretary of the department in which the Coast Guard is operating, shall prescribe the form and manner in which applications for registration permits may be made, and the forms of such permits. The Secretary of State may establish, require the payment of, and collect fees for registration permits; except that the level of such fees shall not exceed the administrative costs incurred by him in issuing such permits.

(d) **TRANSSHIPMENT PERMITS.**—

(1) *AUTHORITY TO ISSUE PERMITS.*—The Secretary may issue a transshipment permit under this subsection which authorizes a vessel other than a vessel of the United States to engage in fishing consisting solely of transporting fish products at sea from a point within the boundaries of any State or the exclusive economic zone to a point outside the United States to any person who—

(A) submits an application which is approved by the Secretary under paragraph (3); and

(B) pays a fee imposed under paragraph (7).

(2) *TRANSMITTAL.*—Upon receipt of an application for a permit under this subsection, the Secretary shall promptly transmit copies of the application to the Secretary of the department in which the Coast Guard is operating, any appropriate Council, and any interested State.

(3) *APPROVAL OF APPLICATION.*—The Secretary may approve, with the concurrence of the appropriate Council, an application for a permit under this section if the Secretary determines that—

(A) the transportation of fish products to be conducted under the permit, as described in the application, will be in the interest of the United States and will meet the applicable requirements of this Act;

(B) the applicant will comply with the requirements described in section 201(c)(2) with respect to activities authorized by any permit issued pursuant to the application;

(C) the applicant has established any bonds or financial assurances that may be required by the Secretary; and

(D) no owner or operator of a vessel of the United States which has adequate capacity to perform the transportation for which the application is submitted has indicated to the Secretary an interest in performing the transportation at fair and reasonable rates.

(4) *WHOLE OR PARTIAL APPROVAL.*—The Secretary may approve all or any portion of an application under paragraph (3).

(5) *FAILURE TO APPROVE APPLICATION.*—If the Secretary does not approve any portion of an application submitted under paragraph (1), the Secretary shall promptly inform the applicant and specify the reasons therefore.

(6) *CONDITIONS AND RESTRICTIONS.*—The Secretary shall establish and include in each permit under this subsection conditions and restrictions which shall be complied with by the owner and operator of the vessel for which the permit is issued. The conditions and restrictions shall include the requirements, regulations, and restrictions set forth in subsection (b)(7).

(7) *FEES.*—The Secretary shall collect a fee for each permit issued under this subsection, in an amount adequate to recover the costs incurred by the United States in issuing the permit.

(e) *PACIFIC INSULAR AREAS.*—

(1) At the request of and with the concurrence of the Governor of the applicable Pacific Insular Area, the Secretary of State in concurrence with the Secretary of Commerce, and the Western Pacific Council, may negotiate and enter into a Pacific Insular Area Fishery Agreement (hereinafter in this subsection referred

to as an *Pacific Fishery Agreement*") to authorize foreign fishing within the exclusive economic zone adjacent to such Pacific Insular Area.

(2) In the case of a Pacific Insular Area other than American Samoa, Guam, or the Northern Mariana Islands, the Secretary of State, with the concurrence of the Secretary of Commerce and the Western Pacific Council, may negotiate and enter into a Pacific Fishery Agreement to authorize foreign fishing within the exclusive economic zone adjacent to such an area.

(3) In the case of American Samoa, Guam, or the Northern Mariana Islands, the Secretary of State shall not negotiate a Pacific Fishery Agreement to authorize foreign fishing within the exclusive economic zone adjacent to such a Pacific Insular Area without consultation with and the concurrence of the Governor of the applicable Pacific Insular Area.

(4) A Pacific Fishery Agreement shall not be considered to supersede any governing international fishery agreement currently in effect under this Act, but shall provide an alternative basis for the conduct of foreign fishing within the exclusive economic zone adjacent to Pacific Insular Areas.

(5) A Pacific Fishery Agreement shall not be entered into if it is determined by the Governor of the appropriate Pacific Insular Area, the Secretary, or the Western Pacific Council that such an agreement will adversely affect the fishing activities of the indigenous peoples of such Pacific Insular Area.

(6) Foreign fishing authorized under a Pacific Fishery Agreement shall conform to the terms of such agreement establishing the conditions under which a permit is issued and held valid. These terms, at a minimum, shall require that a Pacific Fishery Agreement include provisions for a Western Pacific based observer program, annual determination of the quantity of fish that may be harvested, annual determination of fees, data collection and reporting systems, research plans, and monitoring and enforcement tools such as the Vessel Monitoring System (VMS) to ensure effective compliance with the provisions of the Pacific Fishery Agreement and any other terms and conditions deemed appropriate by the Secretary of State, in consultation with the Secretary, the Governor of the appropriate Pacific Insular Area, and the Western Pacific Council.

(7) The Secretary of State may not negotiate a Pacific Fishery Agreement with a country that is in violation of a governing international fishery agreement in effect under this Act.

(8) A Pacific Fishery Agreement shall be valid for a period not to exceed three years and shall become effective according to the procedure of section 203 of this Act.

(9) Foreign Fishing under a Pacific Fishery Agreement shall not be subject to sections 201(d) through (f) and section 201(i) of this Act.

(10) Prior to entering into a Pacific Fishery Agreement, the Western Pacific Council or the appropriate Governor shall develop a three year plan detailing uses for funds to be collected by the Secretary pursuant to such agreement. Such plan shall include conservation goals and guidelines and prioritize planned conservation and management projects. In the case of

American Samoa, Guam, and the Northern Mariana Islands, the appropriate Governor shall develop such a plan in consultation with the Western Pacific Council. In the case of other Pacific Insular Areas, the Western Pacific Council shall develop such a plan in consultation with the Secretary. If a Governor or the Western Pacific Council intends to renew a Pacific Fishery Agreement, a subsequent three-year plan shall be developed at the end of the second year of the existing three year plan.

(11) Fees established pursuant to a Pacific Fishery Agreement shall be paid to the Secretary by the owner or operator of any foreign fishing vessel for which a permit has been issued pursuant to this section. The prescription of such fees is not subject to 31 U.S.C. 9701. The amount of fees may exceed administrative costs and shall be reasonable, fair, and equitable to all participants in the fisheries.

(12) Amounts collected by the Secretary from a Pacific Fishery Agreement for American Samoa, Guam, or the Northern Mariana Islands shall be deposited into the United States Treasury and then covered over to the Treasury of the Pacific Insular Area for which those funds were collected. After the transfer of such funds, the Governor of each appropriate Pacific Insular Area shall compensate:

(A) the Western Pacific Council for mutually agreed upon administrative costs incurred relating to any Pacific Fishery Agreement of the respective Pacific Insular Area; and

(B) the Secretary of State for mutually agreed upon travel expenses for no more than two federal representatives incurred as a direct result of complying with section 204(e)(1).

(13) There is established in the United States Treasury a Western Pacific Sustainable Fisheries Fund into which amounts collected by the Secretary from a Pacific Fisheries Agreement in any Pacific Insular Area other than American Samoa, Guam, or the Northern Mariana Islands shall be deposited. The Fund shall be made available, without appropriation or fiscal year limitation, by the Secretary to the Western Pacific Council, for the purpose of carrying out the provisions of this section.

(14) Amounts used from this Fund to carry out the provisions of this section shall not diminish other funding received by the Western Pacific Council for the purpose of carrying out activities within the Western Pacific Council's mandate other than Pacific Fisheries Agreements.

(15) Amounts generated by Pacific Fishery Agreements in American Samoa, Guam, or the Northern Mariana Islands shall be used for purposes, as described in a three year conservation and management plan developed under paragraph (10), that have been determined by the Governors of the respective Pacific Insular Areas in consultation with the Western Pacific Council to contribute to fishery conservation and management in the respective Pacific Insular Area.

(16) The Western Pacific Sustainable Fisheries Fund, shall be made available by the Secretary to the Western Pacific Council for purposes, as described in the three year conservation and

management plan, that have been determined by the Western Pacific Council in consultation with the Secretary to contribute to fishery and conservation management in the Western Pacific Region. Travel costs of no more than two federal representatives, incurred by the Secretary of State as a direct result of complying with section 204(e)(2) shall be reimbursed from the Western Pacific Sustainable Fisheries Fund.

(17) "Fishery conservation and management" as used in paragraphs (14) and (15) includes but is not limited to:

(A) An approved Western Pacific based observer program to be operated by the Secretary, subject to the approval of the Western Pacific Council, and in consultation with the Governor of the relevant Pacific Insular Area;

(B) Marine and fisheries research, including but not limited to: data collection, analysis, evaluation, and reporting;

(C) Conservation, education, and enforcement, including but not limited to: living marine resource, habitat monitoring and coastal studies;

(D) Grants to the University of Hawaii for technical assistance projects in the US Pacific Insular Areas and the Freely Associated States including but not limited to: Education and training in the development and implementation of sustainable marine resources development projects, scientific research, data collection and analysis, and conservation strategies;

(E) Western Pacific Community-Based Demonstration Projects to foster and promote the management, conservation, and economic enhancement of the indigenous, traditional fishery practices of Western Pacific Communities.

(18) Monies collected by the Secretary from a Pacific Fishery Agreement for a Pacific Insular Area may be allocated for other marine and coastal related uses by the government of each Pacific Insular Area or in the case of Pacific Insular Areas other than American Samoa, Guam, and the Northern Mariana Islands by the Western Pacific Council only after the costs of uses specified in paragraphs (6) and (17)(A) through (17)(E) under this title and the administrative costs of Pacific Fisheries Agreements have been met. The determination of when conservation and management and administrative costs have been met shall be made, in the case of American Samoa, Guam, and the Northern Mariana Islands by the Governor of the respective Pacific Insular Area with the concurrence of the Western Pacific Council, and in the case of any Pacific Insular Area other than American Samoa, Guam, or the Northern Mariana Islands by the Western Pacific Council.

(19) The Western Pacific Sustainable Fisheries Fund of the United States Treasury, shall be made available by the Secretary for the purpose of fisheries conservation and management in the State of Hawaii and the Western Pacific Region only after fisheries conservation and management needs in such Pacific Insular Area other than American Samoa, Guam, or the Northern Mariana Islands have been met as determined by the Western Pacific Council in accordance with its operational standards, policies, procedures, and program milestones.

(20) *In the case of American Samoa, Guam, or the Northern Mariana Islands, amounts received by the Secretary which are attributable to fines or penalties imposed under this Act, including such sums collected from the forfeiture and disposition or sale of property seized subject to its authority, will be covered over to the Treasury of the Pacific Island Area adjacent to the exclusive economic zone in which the violation occurred, after payment of direct costs of the enforcement action to other entities involved in such enforcement action. The Governor of the respective Pacific Insular Area may use such monies available under this paragraph for purposes other than fisheries conservation and management. In the case of violations occurring in the exclusive economic zone adjacent to a Pacific Insular Area other than American Samoa, Guam, and the Northern Mariana Islands, amounts received by the Secretary which are attributable to fines or penalties imposed under this Act, including such sums collected from the forfeiture and disposition or sale of property seized subject to its authority, will be covered over to the Western Pacific Sustainable Fisheries Fund of the United States Treasury to be used for conservation and management as described in paragraphs (6) and (17)(A) through (17)(E) or other related marine and coastal projects.*

§ 1825. Import prohibitions

(a) DETERMINATIONS BY SECRETARY OF STATE.—If the Secretary of State determines that—

(1) he has been unable, within a reasonable period of time, to conclude with any foreign nation an international fishery agreement allowing fishing vessels of the United States equitable access to fisheries over which that nation asserts exclusive fishery management authority including fisheries for tuna species, as recognized by the United States, in accordance with fishing activities of such vessels, if any, and under terms not more restrictive than those established under sections 201(c) and (d) [16 U.S.C. 1821(c) and (d)] and 204(b)(7) and (10) [16 U.S.C. 1824(b)(7) and (10)], because such nation has (A) refused to commence negotiations, or (B) failed to negotiate in good faith;

(2) any foreign nation is not allowing fishing vessels of the United States to engage in fishing for tuna species in accordance with an applicable international fishery agreement, whether or not such nation is a party thereto;

(3) any foreign nation is not complying with its obligations under any existing international fishery agreement concerning fishing by fishing vessels of the United States in any fishery over which that nation asserts exclusive fishery management authority; **[or]**

(4) any fishing vessel of the United States, while fishing in waters beyond any foreign nation's territorial sea, to the extent that such sea is recognized by the United States, is seized by any foreign nation—

(A) in violation of an applicable international fishery agreement;

(B) without authorization under an agreement between the United States and such nation; or

(C) as a consequence of a claim of jurisdiction which is not recognized by the United States; or
 (5) *he has been unable, within a reasonable period of time, to conclude with any foreign nation an international agreement to establish standards and measures for bycatch reduction under section 202(g),*

he shall certify such determination to the Secretary of the Treasury.

(b) PROHIBITIONS.—Upon receipt of any certification from the Secretary of State under subsection (a), the Secretary of the Treasury shall immediately take such action as may be necessary and appropriate to prohibit the importation into the United States—

(1) of all fish and fish products from the fishery involved, if any; and

(2) upon recommendation of the Secretary of State, such other fish or fish products, from any fishery of the foreign nation concerned, which the Secretary of State finds to be appropriate to carry out the purposes of this section.

(c) REMOVAL OF PROHIBITION.—If the Secretary of State finds that the reasons for the imposition of any import prohibition under this section no longer prevail, the Secretary of State shall notify the Secretary of the Treasury, who shall promptly remove such import prohibition.

(d) DEFINITIONS.—As used in this section—

(1) The term “fish” includes any highly migratory species.

(2) The term “fish products” means any article which is produced from or composed of (in whole or in part) any fish.

§ 1826. Large-scale driftnet fishing

(a) SHORT TITLE.—This section incorporates and expands upon provisions of the Driftnet Impact Monitoring, Assessment, and Control Act of 1987 [16 U.S.C. 1822 note] and may be cited as the “Driftnet Act Amendments of 1990”.

(b) FINDINGS.—The Congress finds that—

(1) the continued widespread use of large-scale driftnets beyond the exclusive economic zone of any nation is a destructive fishing practice that poses a threat to living marine resources of the world’s oceans, including but not limited to the North and South Pacific Ocean and the Bering Sea;

(2) the use of large-scale driftnets is expanding into new regions of the world’s oceans, including the Atlantic Ocean and Caribbean Sea;

(3) there is a pressing need for detailed and reliable information on the number of seabirds, sea turtles, nontarget fish, and marine mammals that become entangled and die in actively fished large-scale driftnets and in large-scale driftnets that are lost, abandoned, or discarded;

(4) increased efforts, including reliable observer data and enforcement mechanisms, are needed to monitor, assess, control, and reduce the adverse impact of large-scale driftnet fishing on living marine resources;

(5) the nations of the world have agreed in the United Nations, through General Assembly Resolution Numbered 44-225, approved December 22, 1989, by the General Assembly, that a moratorium should be imposed by June 30, 1992, on the use

of large-scale driftnets beyond the exclusive economic zone of any nation;

(6) the nations of the South Pacific have agreed to a moratorium on the use of large-scale driftnets in the South Pacific through the Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific, which was agreed to in Wellington, New Zealand, on November 29, 1989; and

(7) increasing population pressures and new knowledge of the importance of living marine resources to the health of the global ecosystem demand that greater responsibility be exercised by persons fishing or developing new fisheries beyond the exclusive economic zone of any nation.

(c) POLICY.—It is declared to be the policy of the Congress in this section that the United States should—

(1) implement the moratorium called for by the United Nations General Assembly in Resolution Numbered 44-225;

(2) support the Tarawa Declaration and the Wellington Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific; and

(3) secure a permanent ban on the use of destructive fishing practices, and in particular large-scale driftnets, by persons or vessels fishing beyond the exclusive economic zone of any nation.

(d) INTERNATIONAL AGREEMENTS.—The Secretary, through the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall seek to secure international agreements to implement immediately the findings, policy, and provisions of this section, and in particular an international ban on large-scale driftnet fishing. The Secretary, through the Secretary of State, shall include, in any agreement which addresses the taking of living marine resources of the United States, provisions to ensure that—

(1) each large-scale driftnet fishing vessel of a foreign nation that is party to the agreement, including vessels that may operate independently to develop new fishing areas, which operate beyond the exclusive economic zone of any nation, is included in such agreement;

(2) each large-scale driftnet fishing vessel of a foreign nation that is party to the agreement, which operates beyond the exclusive economic zone of any nation, is equipped with satellite transmitters which provide real-time position information accessible to the United States;

(3) statistically reliable monitoring by the United States is carried out, through the use of on-board observers or through dedicated platforms provided by foreign nations that are parties to the agreement, of all target and nontarget fish species, marine mammals, sea turtles, and sea birds entangled or killed by large-scale driftnets used by fishing vessels of foreign nations that are parties to the agreement;

(4) officials of the United States have the right to board and inspect for violations of the agreement any large-scale driftnet fishing vessels operating under the flag of a foreign nation that is party to the agreement at any time while such vessel is op-

erating in designated areas beyond the exclusive economic zone of any nation;

(5) all catch landed or transshipped at sea by large-scale driftnet fishing vessels of a foreign nation that is a party to the agreement, and which are operated beyond the exclusive economic zone of any nation, is reliably monitored and documented;

(6) time and area restrictions are imposed on the use of large-scale driftnets in order to prevent interception of anadromous species;

(7) all large-scale driftnets used are constructed, insofar as feasible, with biodegradable materials which break into segments that do not represent a threat to living marine resources;

(8) all large-scale driftnets are marked at appropriate intervals in a manner that conclusively identifies the vessel and flag nation responsible for each such driftnet;

(9) the taking of nontarget fish species, marine mammals, sea turtles, seabirds, and endangered species or other species protected by international agreements to which the United States is a party is minimized and does not pose a threat to existing fisheries or the long-term health of living marine resources; and

(10) definitive steps are agreed upon to ensure that parties to the agreement comply with the spirit of other international agreements and resolutions concerning the use of large-scale driftnets beyond the exclusive economic zone of any nation.

(e) REPORT.—Not later than January 1, 1991, and every year thereafter until the purposes of this section are met, the Secretary, after consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a report—

(1) describing the steps taken to carry out the provisions of this section, particularly subsection (c);

(2) evaluating the progress of those efforts, the impacts on living marine resources, including available observer data, and specifying plans for further action;

[(3) identifying and evaluating the effectiveness of unilateral measures and multilateral measures, including sanctions, that are available to encourage nations to agree to and comply with this section, and recommendations for legislation to authorize any additional measures that are needed if those are considered ineffective;

[(4) identifying, evaluating, and making any recommendations considered necessary to improve the effectiveness of the law, policy, and procedures governing enforcement of the exclusive management authority of the United States over anadromous species against fishing vessels engaged in fishing beyond the exclusive economic zone of any nation;]

[(5)] (3) containing a list and description of any new fisheries developed by nations that conduct, or authorize their na-

nationals to conduct, large-scale driftnet fishing beyond the exclusive economic zone of any nation; and

[(6)] (4) containing a list of the nations that conduct, or authorize their nationals to conduct, large-scale driftnet fishing beyond the exclusive economic zone of any nation in a manner that diminishes the effectiveness of or is inconsistent with any international agreement governing large-scale driftnet fishing to which the United States is a party or otherwise subscribes.

(f) CERTIFICATION.—If at any time the Secretary, in consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, identifies any nation that warrants inclusion in the list described under subsection [(e)(6)], (e)(4), the Secretary shall certify that fact to the President. Such certification shall be deemed to be a certification for the purposes of section 8(a) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(a)).

(g) EFFECT ON SOVEREIGN RIGHTS.—This section shall not serve or be construed to expand or diminish the sovereign rights of the United States, as stated by Presidential Proclamation Numbered 5030, dated March 10, 1983, and reflected in this Act or other existing law.

(h) DEFINITION.—As used in this section, the term “living marine resources” includes fish, marine mammals, sea turtles, and seabirds and other waterfowl.

NATIONAL FISHERY MANAGEMENT PROGRAM

§ 1851. National standards for fishery conservation and management

(a) IN GENERAL.—Any fishery management plan prepared, and any regulation promulgated to implement any such plan, pursuant to this title [16 U.S.C. 1851 et seq.] shall be consistent with the following national standards for fishery conservation and management.

(1) Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.

(2) Conservation and management measures shall be based upon the best scientific information available.

(3) To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

(4) Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

(5) Conservation and management measures shall, where practicable, [promote] *consider* efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

(6) Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

(7) Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

(8) *Conservation and management measures shall take into account the importance of the harvest of fishery resources to, minimize, to the extent practicable, adverse economic impacts on, and provide for the sustained participation of, fishing communities; except that no such measure shall have economic allocation as its sole purpose.*

(9) *Conservation and management measures shall, to the extent practicable, minimize bycatch and the mortality of bycatch which cannot be avoided.*

(10) *Conservation and management measures shall promote the safety of human life at sea.*

(b) GUIDELINES.—The Secretary shall establish advisory guidelines (which shall not have the force and effect of law), based on the national standards, to assist in the development of fishery management plans.

§ 1852. Regional Fishery Management Councils

(a) ESTABLISHMENT.—(1) There shall be established, within 120 days after the date of the enactment of this Act, eight Regional Fishery Management Councils, as follows:

[(1)] (A) NEW ENGLAND COUNCIL.—The New England Fishery Management Council shall consist of the States of Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut and shall have authority over the fisheries in the Atlantic Ocean seaward of such States (except as provided in [section 304(f)(3) [16 U.S.C. 1854(f)(3)]] paragraph (3)). The New England Council shall have 17 voting members, including 11 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State).

[(2)] (B) MID-ATLANTIC COUNCIL.—The Mid-Atlantic Fishery Management Council shall consist of the States of New York, New Jersey, Delaware, Pennsylvania, Maryland, [and Virginia] *Virginia, and North Carolina* and shall have authority over the fisheries in the Atlantic Ocean seaward of such States (except *North Carolina* and as provided in [section 304(f)(3) [16 U.S.C. 1854(f)(3)]] paragraph (3)). The Mid-Atlantic Council shall have [(19)] 21 voting members, including [(12)] 13 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State).

[(3)] (C) SOUTH ATLANTIC COUNCIL.—The South Atlantic Fishery Management Council shall consist of the States of North Carolina, South Carolina, Georgia, and Florida and shall have authority over the fisheries in the Atlantic Ocean seaward of such States (except as provided in [section 304(f)(3) [16 U.S.C. 1854(f)(3)]] paragraph (3)). The South Atlantic Council shall have 13 voting members, including 8 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State).

[(4)] (D) CARIBBEAN COUNCIL.—The Caribbean Fishery Management Council shall consist of the Virgin Islands and the

Commonwealth of Puerto Rico and shall have authority over the fisheries in the Caribbean Sea and Atlantic Ocean seaward of such States (except as provided in section [304(f)(3) [16 U.S.C. 1854(f)(3)]] *paragraph (3)*). The Caribbean Council shall have 7 voting members, including 4 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State).

[(5)] (E) GULF COUNCIL.—The Gulf of Mexico Fishery Management Council shall consist of the States of Texas, Louisiana, Mississippi, Alabama, and Florida and shall have authority over the fisheries in the Gulf of Mexico seaward of such States (except as provided in [section 304(f)(3) [16 U.S.C. 1854(f)(3)]] *paragraph (3)*). The Gulf Council shall have 17 voting members, including 11 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State).

[(6)] (F) PACIFIC COUNCIL.—The Pacific Fishery Management Council shall consist of the States of California, Oregon, Washington, and Idaho and shall have authority over the fisheries in the Pacific Ocean seaward of such States. The Pacific Council shall have 13 voting members, including 8 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State).]

(F) PACIFIC COUNCIL.—*The Pacific Fishery Management Council shall consist of the States of California, Oregon, Washington, and Idaho and shall have authority over the fisheries in the Pacific Ocean seaward of such States. The Pacific Council shall have 14 voting members, including 8 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State), and including one appointed from an Indian tribe with Federally recognized fishing rights from California, Oregon, Washington, or Idaho in accordance with subsection (b)(5).*

[(7)] (G) NORTH PACIFIC COUNCIL.—The North Pacific Fishery Management Council shall consist of the States of Alaska, Washington, and Oregon and shall have authority over the fisheries in the Arctic Ocean, Bering Sea, and Pacific Ocean seaward of Alaska. The North Pacific Council shall have 11 voting members, including 7 appointed by the Secretary in accordance with subsection (b)(2) (5 of whom shall be appointed from the State of Alaska and 2 of whom shall be appointed from the State of Washington).

[(8)] (H) WESTERN PACIFIC COUNCIL.—The Western Pacific Fishery Management Council shall consist of the States of Hawaii, American Samoa, Guam, and the Northern Mariana Islands and shall have authority over the fisheries in the Pacific Ocean seaward of such States and of the Commonwealths, territories, and possessions of the United States in the Pacific Ocean area. The Western Pacific Council shall have 13 voting members, including 8 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each of the following States: Hawaii, American Samoa, Guam, and the Northern Mariana Islands).

(2) *Each Council shall reflect the expertise and interest of the several constituent States in the ocean area over which such Council is granted authority.*

(3) *The Secretary shall have authority over any highly migratory species fishery that is within the geographical area of authority of more than one of the following Councils: New England Council, Mid-Atlantic Council, South Atlantic Council, Gulf Council, and Caribbean Council.*

(b) VOTING MEMBERS.—

(1) The voting members of each Council shall be:

(A) The principal State official with marine fishery management responsibility and expertise in each constituent State, who is designated as such by the Governor of the State, so long as the official continues to hold such position, or the designee of such official.

(B) The regional director of the National Marine Fisheries Service for the geographic area concerned, or his designee, except that if two such directors are within such geographical area, the Secretary shall designate which of such directors shall be the voting member.

(C) The members required to be appointed by the Secretary in accordance with subsection [(b)(2).] *paragraphs (2) and (5) of this subsection.*

(2)(A) The members of each Council required to be appointed by the Secretary must be individuals who, by reason of their occupational or other experience, scientific expertise, or training, are knowledgeable regarding the conservation and management, or the commercial or recreational harvest, of the fishery resources of the geographical area concerned. Within nine months after the date of enactment of the Fishery Conservation Amendments of 1990 [enacted Nov. 28, 1990], the Secretary shall, by regulation, prescribe criteria for determining whether an individual satisfies the requirements of this subparagraph.

(B) The Secretary, in making appointments under this section, shall, to the extent practicable, ensure a fair and balanced apportionment, on a rotating or other basis, of the active participants (or their representatives) in the commercial and recreational fisheries under the jurisdiction of the Council. On January 31, 1991, and each year thereafter, the Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a report on the actions taken by the Secretary to ensure that such fair and balanced apportionment is achieved. The report shall—

(i) list the fisheries under the jurisdiction of each Council, outlining for each fishery the type and quantity of fish harvested, fishing and processing methods employed, the number of participants, the duration and range of the fishery, and other distinguishing characteristics;

(ii) assess the membership of each Council in terms of the apportionment of the active participants in each such fishery; and

(iii) state the Secretary's plans and schedule for actions to achieve a fair and balanced apportionment on the Council for the active participants in any such fishery.

(C) The Secretary shall appoint the members of each Council from a list of individuals submitted by the Governor of each applicable constituent State. A Governor may not submit the names of individuals to the Secretary for appointment unless the Governor has determined that each such individual is qualified under the requirements of subparagraph (A) and unless the Governor has, to the extent practicable, first consulted with representatives of the commercial and recreational fishing interests of the State regarding those individuals. Each such list shall include the names and pertinent biographical data of not less than three individuals for each applicable vacancy and shall be accompanied by a statement by the Governor explaining how each such individual meets the requirements of subparagraph (A). The Secretary shall review each list submitted by a Governor to ascertain if the individuals on the list are qualified for the vacancy on the basis of such requirements. If the Secretary determines that any individual is not qualified, the Secretary shall notify the appropriate Governor of that determination. The Governor shall then submit a revised list or resubmit the original list with an additional explanation of the qualifications of the individual in question. An individual is not eligible for appointment by the Secretary until that individual complies with the applicable financial disclosure requirements under subsection (k).

(D) Whenever the Secretary makes an appointment to a Council, the Secretary shall make a public announcement of such appointment not less than 45 days before the first day on which the individual is to take office as a member of the Council.

(3) Each voting member appointed to a Council by the Secretary in accordance with subsection (b)(2) shall serve for a term of 3 years; except that the Secretary may designate a shorter term if necessary to provide for balanced expiration to terms of office. No member appointed after January 1, 1986, may serve more than three *full* consecutive terms. Any term completed prior to December 31, 1987, shall not be counted in determining the number of consecutive terms served by any Council member.

(4) Successors to the voting members of any Council shall be appointed in the same manner as the original voting members. Any individual appointed to fill a vacancy occurring prior to the expiration of any term of office shall be appointed for the remainder of that term.

[(5) The Secretary may remove for cause any member of a Council required to be appointed by the Secretary in accordance with subsection (b)(2) if the Council concerned first recommends removal by not less than two-thirds of the members who are voting members. A removal recommendation of a Council must be in writing and accompanied by a statement of the reasons upon which the recommendation is based.]

(5)(A) *The Secretary shall appoint to the Pacific Fishery Management Council one representative of an Indian tribe with Federally recognized fishing rights from California, Oregon, Washington, or Idaho, from a list of not less than 3 individuals submitted by the tribal governments. The representative shall serve for a term of 3 years and may not serve more than 3 full consecutive terms. The Secretary, in consultation with the Secretary of the Interior and tribal governments, shall establish by regulation the procedure for submitting lists under this subparagraph.*

(B) *Representation shall be rotated among the tribes taking into consideration—*

(i) the qualifications of the individuals on the list referred to in subparagraph (A),

(ii) the various treaty rights of the Indian tribes involved and judicial cases that set forth how those rights are to be exercised, and

(iii) the geographic area in which the tribe of the representative is located.

(C) *A vacancy occurring prior to the expiration of any term shall be filled in the same manner as set out in subparagraphs (A) and (B), except that the Secretary may use the list from which the vacating representative was chosen.*

(6) *The Secretary may remove for cause any member of a Council required to be appointed by the Secretary in accordance with subsection (b)(2) if—*

(A) the Council concerned first recommends removal by not less than two-thirds of the members who are voting members and submits such removal recommendation to the Secretary in writing together with a statement of the basis for the recommendation; or

(B) the member is found by the Secretary, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act prohibited by section 307(1)(O).

(c) **NONVOTING MEMBERS.—**

(1) **The nonvoting members of each Council shall be:**

(A) **The regional or area director of the United States Fish and Wildlife Service for the geographical area concerned, or his designee.**

(B) **The commander of the Coast Guard district for the geographical area concerned, or his designee; except that, if two Coast Guard districts are within such geographical area, the commander designated for such purpose by the commandant of the Coast Guard.**

(C) **The executive director of the Marine Fisheries Commission for the geographical area concerned, if any, or his designee.**

(D) **One representative of the Department of State designated for such purpose by the Secretary of State, or his designee.**

(2) **The Pacific Council shall have one additional nonvoting member who shall be appointed by, and serve at the pleasure of, the Governor of Alaska.**

(d) COMPENSATION AND EXPENSES.—The voting members of [each Council,] *each Council who are required to be appointed by the Secretary and who are not employed by the Federal Government or any State or local government, [shall, until January 1, 1992, receive compensation at the daily rate for GS-18 of the General Schedule, and after December 31, 1991, at the daily rate for GS-16] shall receive compensation at the daily rate for GS-15, step 7* of the General Schedule, when engaged in the actual performance of duties for such Council. The voting members of each Council, any nonvoting member described in subsection (c)(1)(C), and the nonvoting member appointed pursuant to subsection (c)(2) shall be reimbursed for actual expenses incurred in the performance of such duties, and other nonvoting members and Council staff members may be reimbursed for actual expenses.

(e) TRANSACTION OF BUSINESS.—

(1) A majority of the voting members of any Council shall constitute a quorum, but one or more such members designated by the Council may hold hearings. All decisions of any Council shall be by majority vote of the voting members present and voting.

(2) The voting members of each Council shall select a Chairman for such Council from among the voting members.

(3) Each Council shall meet at appropriate times and places in any of the constituent States of the Council at the call of the Chairman or upon the request of a majority of its voting members.

(4) If any voting member of a Council disagrees with respect to any matter which is transmitted to the Secretary by such Council, such member may submit a statement to the Secretary setting forth the reasons for such disagreement. The regional director of the National Marine Fisheries Service serving on the Council, or the regional director's designee, shall submit such a statement, which shall be made available to the public upon request, if the regional director disagrees with any such matter.

(5) *At the request of any voting member of a Council, the Council shall hold a roll call vote on any matter before the Council. The official minutes and other appropriate records of any Council meeting shall identify all roll call votes held, the name of each voting member present during each roll call vote, and how each member voted on each roll call vote.*

(f) STAFF AND ADMINISTRATION.—

(1) Each Council may appoint, and assign duties to, an executive director and such other full- and part-time administrative employees as the Secretary determines are necessary to the performance of its functions.

(2) Upon the request of any Council, and after consultation with the Secretary, the head of any Federal agency is authorized to detail to such Council, on a reimbursable basis, any of the personnel of such agency, to assist such Council in the performance of its functions under this Act.

(3) The Secretary shall provide to each Council such administrative and technical support services as are necessary for the effective functioning of such Council.

(4) The Administrator of General Services shall furnish each Council with such offices, equipment, supplies, and services as he is authorized to furnish to any other agency or instrumentality of the United States.

(5) The Secretary and the Secretary of State shall furnish each Council with relevant information concerning foreign fishing and international fishery agreements.

(6) Each Council shall determine its organization, and prescribe its practices and procedures for carrying out its functions under this Act, in accordance with such uniform standards as are prescribed by the Secretary. The procedures of a Council, and of its scientific and statistical committee and advisory panels established under subsection (g), must be consistent with the procedural guidelines set forth in subsection (i)(2). Each Council shall publish and make available to the public a statement of its organization, practices, and procedures.

(7) The Secretary shall pay—

(A) the compensation and expenses provided for in subsection (d);

(B) appropriate compensation to employees appointed under paragraph (1);

(C) the amounts required for reimbursement of other Federal agencies under paragraphs (2) and (4);

(D) the actual expenses of the members of the committees and panels established under subsection (g); and

(E) such other costs as the Secretary determines are necessary to the performance of the functions of the Councils.

(g) COMMITTEES AND PANELS.—

(1) Each Council shall establish and maintain, and appoint the members of, a scientific and statistical committee to assist it in the development, collection, and evaluation of such statistical, biological, economic, social, and other scientific information as is relevant to such Council's development and amendment of any fishery management plan.

(2) Each Council shall establish such other advisory panels as are necessary or appropriate to assist it in carrying out its functions under this Act.

(3)(A) Each Council shall establish and maintain a fishing industry advisory committee which shall provide information and recommendations on, and assist in the development of, fishery management plans and amendments to such plans.

(B) Appointments to a committee established under subparagraph (A) shall be made by each Council in such a manner as to provide fair representation to commercial fishing interests in the geographical area of authority of the Council.

(4) *The Secretary shall establish advisory panels to assist in the collection and evaluation of information relevant to the development of any fishery management plan or plan amendment under section 304(g). Each advisory panel shall participate in all aspects of the development of the plan or amendment; be balanced in its representation of commercial, recreational, and other interests; and consist of not less than 7 individuals who*

are knowledgeable about the fishery for which the plan or amendment is developed, selected from among—

(A) members of advisory committees and species working groups appointed under Acts implementing relevant international fishery agreements pertaining to highly migratory species; and

(B) other interested persons.

[(4)] (5) Decisions and recommendations made by committees and panels established under this subsection shall be considered to be advisory in nature.

(h) FUNCTIONS.—Each Council shall, in accordance with the provisions of this Act—

(1) prepare and submit to the Secretary a fishery management plan with respect to each fishery (except as provided in [section 304(f)(3) [16 U.S.C. 1854(f)(3)]]] *subsection (a)(3)*) within its geographical area of authority that requires conservation and management and, from time to time, such amendments to each such plan as are necessary;

(2) prepare comments on any application for foreign fishing transmitted to it under [section 204(b)(4)(C) [16 U.S.C. 1824(b)(4)(C)]], *section 204(b)(4)(C) or section 204(d)*, and any fishery management plan or amendment transmitted to it under section 304(c)(2) [16 U.S.C. 1854(c)(2)];

(3) conduct public hearings, at appropriate times and in appropriate locations in the geographical area concerned, so as to allow all interested persons an opportunity to be heard in the development of fishery management plans and amendments to such plans, and with respect to the administration and implementation of the provisions of this Act (and for purposes of this paragraph, the term “geographical area concerned” may include an area under the authority of another Council if the fish in the fishery concerned migrate into, or occur in, that area or if the matters being heard affect fishermen of that area; but not unless such other Council is first consulted regarding the conduct of such hearings within its area);

(4) submit to the Secretary such periodic reports as the Council deems appropriate, and any other relevant report which may be requested by the Secretary;

(5) review on a continuing basis, and revise as appropriate, the assessments and specifications made pursuant to section 303(a)(3) and (4) [16 U.S.C. 1853(a)(3), (4)] with respect to the optimum yield from, the capacity and extent to which United States fish processors will process United States harvested fish from, and the total allowable level of foreign fishing in, each fishery (except as provided in [section 304(f)(3) [16 U.S.C. 1854(f)(3)]]] *subsection (a)(3)*) within its geographical area of authority, and

(6) conduct any other activities which are required by, or provided for in, this Act or which are necessary and appropriate to the foregoing functions.

[(i) FISHERY HABITAT CONCERNS.—

[(1) Each Council—

[(A) may comment on and make recommendations concerning any activity undertaken, or proposed to be under-

taken, by any State or Federal agency that, in the view of the Council, may affect the habitat of a fishery resource under its jurisdiction; and

[(B) shall comment on and make recommendations concerning any such activity that, in the view of the Council, is likely to substantially affect the habitat of an anadromous fishery resource under its jurisdiction.

[(2) Within 45 days after receiving a comment or recommendation under paragraph (1) from a Council, a Federal agency shall provide a detailed response, in writing, to the Council regarding the matter. In the case of a comment or recommendation under paragraph (1)(B), the response shall include a description of measures being considered by the agency for mitigating or offsetting the impact of the activity on such habitat.]

[(j)] (i) PROCEDURAL MATTERS.—

(1) The Federal Advisory Committee Act (5 U.S.C. App. 1) shall not apply to the Councils or to the scientific and statistical committees or advisory panels [of the Councils.] *established under subsection (g).*

(2) The following guidelines apply with respect to the conduct of business at meetings of a Council, and of the scientific and statistical committee and advisory panels [of a Council:] *established under subsection (g):*

(A) Unless closed in accordance with paragraph (3), each regular meeting and each emergency meeting shall be open to the public.

(B) Emergency meetings shall be held at the call of the chairman or equivalent presiding officer.

(C) Timely public notice of each regular meeting and each emergency meeting, including the time, place, and agenda of the meeting, shall be published in local newspapers in the major fishing ports of the [Council's] region (and in other major fishing ports having a direct interest in the affected fishery) and such notice may be given by such other means as will result in wide publicity. Timely notice of each regular meeting shall also be published in the Federal Register. *The published agenda of the meeting may not be modified without public notice or within 14 days prior to the meeting date.*

(D) Interested persons shall be permitted to present oral or written statements regarding the matters on the agenda at meetings. *All written data submitted to a Council by an interested person shall include a statement of the source and date of such information. Any oral or written statement shall include a brief description of the background and interests of the person in the subject of the oral or written statement.*

[(E) Minutes of each meeting shall be kept and shall contain a record of the persons present, an accurate description of matters discussed and conclusions reached, and copies of all statements filed.]

(E) Detailed minutes of each meeting of the Council shall be kept and shall contain a record of the persons present,

a complete and accurate description of matters discussed and conclusions reached, and copies of all statements filed. The Chairman shall certify the accuracy of the minutes of each meeting and submit a copy thereof to the Secretary. The minutes shall be made available to any court of competent jurisdiction.

(F) Subject to the procedures established [by the Council] under paragraph (4), and the guidelines prescribed by the Secretary under section [303(d) [16 U.S.C. 1853(d)],] 402(b) relating to confidentiality, the administrative record, including minutes required under subparagraph (E), of each meeting, and records or other documents which were made available to or prepared for or by the Council, committee, or panel incident to the meeting, shall be available for public inspection and copying at a single location in the offices of the Council or the Secretary, as appropriate.

(3)(A) Each Council, scientific and statistical committee, and advisory panel—

(i) shall close any meeting, or portion thereof, that concerns matters or information that bears a national security classification; and

(ii) may close any meeting, or portion thereof, that concerns matters or information that pertains to national security, employment matters, or briefings on litigation in which the Council is interested.

Subparagraphs (D) and (F) of paragraph (2) shall not apply to any meeting or portion thereof that is so closed.

(B) If any meeting or portion is closed, the Council concerned shall notify local newspapers in the major fishing ports within its region (and in other major, affected fishing ports), including in that notification the time and place of the meeting. This subparagraph does not require notification regarding any brief closure of a portion of a meeting in order to discuss employment or other internal administrative matters.

(4) Each Council shall establish appropriate procedures applicable to it and to its committee and advisory panels for ensuring the confidentiality of the statistics that may be submitted to it by Federal or State authorities, and may be voluntarily submitted to it by private persons; including, but not limited to, procedures for the restriction of Council employee access and the prevention of conflicts of interest; except that such procedures, in the case of statistics submitted to the Council by a State or by the Secretary under section [303(d) [16 U.S.C. 1853(d)],] 402(b), must be consistent with the laws and regulations of that State, or with the procedures of the Secretary, as the case may be, concerning the confidentiality of the statistics.

(5) Each Council shall specify those procedures that are necessary or appropriate to ensure that the committees and advisory panels established under subsection (g) are involved, on a continuing basis, in the development and amendment of fishery management plans.

(6) At any time when a Council determines it appropriate to consider new information from a State or Federal agency or from a Council advisory body, the Council shall give comparable consideration to new information offered at that time by interested members of the public. Interested parties shall have a reasonable opportunity to respond to new data or information before the Council takes final action on conservation and management measures.

[(k)] (j) DISCLOSURE OF FINANCIAL INTEREST AND RECUSAL.—

[(1) For purposes of this subsection, the term “affected individual” means an individual who—

[(A) is nominated by the Governor of a State for appointment as a voting member of a Council in accordance with subsection (b)(2);

[(B) is a voting member of a Council appointed under subsection (b)(2); or

[(C) is the executive director of a Council.]]

(1) *For the purposes of this subsection—*

(A) *the term “affected individual” means an individual who—*

(i) is nominated by the Governor of a State for appointment as a voting member of a Council in accordance with subsection (b)(2); or

(ii) is a voting member of a Council appointed under subsection (b)(2); and

(B) the term “designated official” means a person with expertise in Federal conflict-of-interest requirements who is designated by the Secretary, with the concurrence of a majority of the voting members of the Council, to attend Council meetings and make determinations under paragraph (7)(B).

(2) Each affected individual must disclose any financial interest held by—

(A) that individual;

(B) the spouse, minor child, or partner of that individual; and

(C) any organization (other than the Council) in which that individual is serving as an officer, director, trustee, partner, or employee;

in any harvesting, processing, or marketing activity that is being, or will be, undertaken within any fishery over which the Council concerned has jurisdiction.

(3) The disclosure required under paragraph (2) shall be made—

(A) in the case of an affected individual referred to in paragraph [(1)(A)], (1)(A)(i), before appointment by the Secretary; and

(B) in the case of an affected individual referred to in paragraph [(1)(B) or (C)], (1)(A)(ii), within 45 days of taking office.

(4) An affected individual referred to in paragraph [(1)(B) or (C)] (1)(A)(ii) must update his or her disclosure form at any time any such financial interest is acquired, or substantially

changed, by any person referred to in paragraph (2)(A), (B), or (C).

(5) The financial interest disclosures required by this subsection shall—

(A) be made on such forms, in accordance with such procedures, and at such times, as the Secretary shall by regulation prescribe; **[and]**

(B) be kept on file, and made available for public inspection at reasonable hours, at the Council **[offices.]** *offices; and*

(C) be kept on file by the Secretary for use in reviewing determinations under paragraph (7)(B) and made available for public inspection at reasonable hours.

(6) The participation by an affected individual referred to in paragraph **[(1)(B) or (C)]** *(1)(A)(ii)* in an action by a Council during any time in which that individual is not in compliance with the regulations prescribed under paragraph (5) may not be treated as cause for the invalidation of that action.

(7)(A) After the effective date of regulations promulgated under subparagraph (F) of this paragraph, an affected individual required to disclose a financial interest under paragraph (2) shall not vote on a Council decision which would have a significant and predictable effect on such financial interest. A Council decision shall be considered to have a significant and predictable effect on a financial interest if there is a close causal link between the Council decision and an expected and disproportionate benefit, shared only by a minority of persons within the same fishery and gear type, to the financial interest. An affected individual who may not vote may participate in Council deliberations relating to the decision after notifying the Council of the voting recusal and identifying the financial interest that would be affected.

(B) At the request of an affected individual, or upon the initiative of the appropriate designated official, the designated official shall make a determination for the record whether a Council decision would have a significant and predictable effect on a financial interest.

(C) Any Council member may submit a written request to the Secretary to review any determination by the designated official under subparagraph (B) within 10 days of such determination. Such review shall be completed within 30 days of receipt of the request.

(D) Any affected individual who does not vote in a Council decision in accordance with this subsection shall state for the record how he or she would have voted on such decision if he or she had voted.

(E) If the Council makes a decision before the Secretary has reviewed a determination under subparagraph (C), the eventual ruling may not be treated as cause for the invalidation or reconsideration by the Secretary of such decision.

(F) The Secretary, in consultation with the Councils and by not later than one year from the date of enactment of this Act, shall promulgate regulations which prohibit an affected individual from voting in accordance with subparagraph (A), and

which allow for the making of determinations under subparagraphs (B) and (C).

[(7)] (8) Section 208 of title 18, United States Code, does not apply to an affected individual referred to in paragraph (1)(B) or (C) during any time in which that individual is in compliance with the regulations prescribed under paragraph (5).

§ 1853. Contents of fishery management plans

(a) REQUIRED PROVISIONS.—Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, shall—

(1) contain the conservation and management measures, applicable to foreign fishing and fishing by vessels of the United States, which are—

(A) necessary and appropriate for the conservation and management of the fishery, to prevent overfishing, and to protect, restore, and promote the long-term health and stability of the fishery;

(B) described in this subsection or subsection (b), or both; and

(C) consistent with the national standards, the other provisions of this Act, regulations implementing recommendations by international organizations in which the United States participates (including but not limited to closed areas, quotas, and size limits), and any other applicable law;

(2) contain a description of the fishery, including, but not limited to, the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the cost likely to be incurred in management, actual and potential revenues from the fishery, any recreational interests in the fishery, and the nature and extent of foreign fishing and Indian treaty fishing rights, if any;

(3) assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from, the fishery, and include a summary of the information utilized in making such specification;

(4) assess and specify—

(A) the capacity and the extent to which fishing vessels of the United States, on an annual basis, will harvest the optimum yield specified under paragraph (3),

(B) the portion of such optimum yield which, on an annual basis, will not be harvested by fishing vessels of the United States and can be made available for foreign fishing, and

(C) the capacity and extent to which United States fish processors, on an annual basis, will process that portion of such optimum yield that will be harvested by fishing vessels of the United States;

(5) specify the pertinent data which shall be submitted to the Secretary with respect to the fishery, including, but not limited to, information regarding the type and quantity of fishing gear used, catch by species in numbers of fish or weight thereof, areas in which fishing was engaged in, time of fishing, number of hauls, and the estimated processing capacity of, and the ac-

tual processing capacity utilized by, United States fish processors,

(6) consider and provide for temporary adjustments, after consultation with the Coast Guard and persons utilizing the fishery, regarding access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safe conduct of the fishery; except that the adjustment shall not adversely affect conservation efforts in other fisheries or discriminate among participants in the affected fishery;

[(7) include readily available information regarding the significance of habitat to the fishery and assessment as to the effects which changes to that habitat may have upon the fishery;]

(7) describe and identify essential fish habitat for the fishery based on the guidelines established by the Secretary under section 305(b)(1)(A), minimize where practicable adverse effects on such habitat caused by fishing, and identify other actions which should be considered to encourage the conservation and enhancement of such habitat.

(8) in the case of a fishery management plan that, after January 1, 1991, is submitted to the Secretary for review under section 304(a) [16 U.S.C. 1854(a)] (including any plan for which an amendment is submitted to the Secretary for such review) or is prepared by the Secretary, assess and specify the nature and extent of scientific data which is needed for effective implementation of the plan; [and]

(9) include a fishery impact statement for the plan or amendment (in the case of a plan or amendment thereto submitted to or prepared by the Secretary after October 1, 1990) which shall assess, specify, and describe the likely effects, if any, of the conservation and management measures on—

(A) participants in the fisheries *and fishing communities* affected by the plan or amendment; and

(B) participants in the fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council and representatives of those [participants.] *participants;*

(10) specify objective and measurable criteria for identifying when the fishery to which the plan applies is overfished (with an analysis of how the criteria were determined and the relationship of the criteria to the reproductive potential of stocks of fish in that fishery) and, in the case of a fishery which the Council or Secretary has determined is overfished, or is approaching an overfished condition, contain conservation and management measures to rebuild the fishery;

(11) assess the amount and type of bycatch occurring in the fishery, and, to the extent practicable and in the following priority, include conservation and management measures to—

(A) minimize bycatch; and

(B) minimize the mortality of bycatch which cannot be avoided;

(12) assess the amount and type of fish caught during recreational fishing, and to the extent practicable, include con-

servation and management measures to minimize the mortality of fish caught and released that are the target species of recreational fishing, under catch and release programs;

(13) take into account the safety of human life at sea.

(b) DISCRETIONARY PROVISIONS.—Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may—

(1) require a permit to be obtained from, and fees to be paid to, the Secretary, with respect to—

(A) any fishing vessel of the United States fishing, or wishing to fish, in the exclusive economic zone or special areas, or for anadromous species or Continental Shelf fishery resources beyond such zone or areas;

(B) the operator of any such vessel; or

(C) any United States fish processor who first receives fish that are subject to the plan;

(2) designate zones where, and periods when, fishing shall be limited, or shall not be permitted, or shall be permitted only by specified types of fishing vessels or with specified types and quantities of fishing gear;

(3) establish specified limitations on the catch of fish (based on area, species, size, number, weight, sex, incidental catch, total biomass, or other factors), which are necessary and appropriate for the conservation and management of the fishery;

(4) prohibit, limit, condition, or require the use of specified types and quantities of fishing gear, fishing vessels, or equipment for such vessels, including devices which may be required to facilitate enforcement of the provisions of this Act;

(5) incorporate (consistent with the national standards, the other provisions of this Act, and any other applicable law) the relevant fishery conservation and management measures of the coastal States nearest to the fishery;

(6) establish a [system for limiting access to] *limited access system* for the fishery in order to achieve optimum yield if, in developing such system, the Council and the Secretary take into account—

(A) present participation in the fishery,

(B) historical fishing practices in, and dependence on, the fishery,

(C) the economics of the fishery,

(D) the capability of fishing vessels used in the fishery to engage in other fisheries,

(E) the cultural and social framework relevant to the fishery *and fishing community*, and

(F) any other relevant considerations;

(7) require fish processors who first receive fish that are subject to the plan to submit data (other than economic data) which are necessary for the conservation and management of the fishery;

(8) require that observers be carried on board a vessel of the United States engaged in fishing for species that are subject to the plan, for the purpose of collecting data necessary for the conservation and management of the fishery; except that such a vessel shall not be required to carry an observer on board if

the facilities of the vessel for the quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized;

(9) assess and specify the effect which the conservation and management measures of the plan will have on the stocks of naturally spawning anadromous fish in the region; **[and]**

(10) *include, consistent with the other provisions of this Act, conservation and management measures that provide a harvest preference or other incentives for participants within each gear group to employ fishing practices that result in lower levels of bycatch; and*

[(10)] (11) prescribe such other measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery.

[(c) PROPOSED REGULATIONS.—The proposed regulations which the Council deems necessary or appropriate for purposes of carrying out a plan or amendment to a plan shall be submitted to the Secretary simultaneously with the plan or amendment for action by the Secretary under sections 304 and 305 [16 U.S.C. 1854 and 1855].**]**

(c) PROPOSED REGULATIONS.—Proposed regulations which the Council deems necessary or appropriate for the purposes of implementing a fishery management plan or plan amendment may be submitted to the Secretary for action under section 304—

(1) simultaneously with submission of the plan or amendment to the Secretary for action under section 304; or

(2) at any time after the plan or amendment is approved.

[(d) CONFIDENTIALITY OF STATISTICS.—Any statistic submitted to the Secretary by any person in compliance with any requirement under subsections (a) and (b) shall be confidential and shall not be disclosed; except—

[(1) to Federal employees and Council employees who are responsible for management plan development and monitoring;

[(2) to State employees pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business of any person; or

[(3) when required by court order.

[The Secretary shall, by regulation, prescribe such procedures as may be necessary to preserve such confidentiality, except that the Secretary may release or make public any such statistics in any aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such statistics. Nothing in this subsection shall be interpreted or construed to prevent the use for conservation and management purposes by the Secretary, or with the approval of the Secretary, the Council, of any statistic submitted in compliance with a requirement under subsection (a) or (b).

[(e) DATA COLLECTION PROGRAMS.—If a Council determines that additional information and data (other than information and data that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations) would be beneficial for the purposes of—

[(1) determining whether a fishery management plan is needed for a fishery; or

[(2) preparing a fishery management plan; the Council may request that the Secretary implement a data collection program for the fishery which would provide the types of information and data (other than information and data that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations) specified by the Council. The Secretary shall approve such a data collection program if he determines that the need is justified, and shall promulgate regulations to implement the program within 60 days after such determination is made. If the Secretary determines that the need for a data collection program is not justified, he shall inform the Council of the reasons for such determination in writing. The determinations of the Secretary under this subsection regarding a Council request shall be made within a reasonable period of time after he receives that request.

[(f) RESTRICTION ON USE OF CERTAIN DATA.—The Secretary shall promulgate regulations to restrict the use, in civil enforcement or criminal proceedings under this Act, the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.), or the Endangered Species Act (16 U.S.C. 1531 et seq.), of information collected by voluntary fishery data collectors, including sea samplers, while aboard any vessel for conservation and management purposes if the presence of such a fishery data collector aboard is not required by any of such Acts or regulations thereunder.]

(d) *INDIVIDUAL FISHING QUOTAS.*—

(1)(A) *A Council may not recommend and the Secretary may not approve or implement any fishery management plan, plan amendment or regulation under this Act which creates a new individual fishing quota program during the fiscal years for which funds are authorized under section 4.*

(B) *Any fishery management plan, plan amendment or regulation approved by the Secretary on or after January 4, 1995 which creates any new individual fishing quota program shall be repealed and immediately resubmitted by the Secretary to the appropriate Council and shall not be recommended, approved or implemented during the moratorium set forth in paragraph (1).*

(2)(A) *No provision of law shall be construed to limit the authority of a Council to recommend and the Secretary to approve the termination or limitation, without compensation to holders of any limited access system permits, of a fishery management plan, plan amendment or regulation that provides for a limited access system, including an individual fishing quota system.*

(B) *This subsection shall not be construed to prohibit a Council from recommending and the Secretary from approving amendments to a fishery management plan, plan amendment, or regulation which implement an individual fishing quota program, if such program was approved prior to January 4, 1995.*

(3) *Individual fishing quotas shall be considered permits for the purposes of sections 307, 308 and 309.*

(4)(A) *A Council may recommend, and the Secretary may approve and administer, a program which allows up to 25 percent*

of any fees collected under section 304(d)(2) to be used, pursuant to section 1104A(a)(7) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1274(a)(7)), to guarantee or make a commitment to guarantee, payment of principal of and interest on an obligation which aids in financing the—

- (i) purchase of individual fishing quotas by fishermen who fish from small vessels; and*
- (ii) first-time purchase of individual fishing quotas by entry level fishermen.*

(B) A Council making a recommendation under subparagraph (A) shall recommend criteria, consistent with the provisions of this Act, that a fisherman must meet to qualify for guarantees under clauses (i) and (ii) of subparagraph (A) and the portion of funds to be allocated for guarantees under each clause.

§ 1854. Action by Secretary

[(a) ACTION BY THE SECRETARY AFTER RECEIPT OF PLAN.—

[(1) After the Secretary receives a fishery management plan, or amendment to a plan, which was prepared by a Council, the Secretary shall—

[(A) immediately make a preliminary evaluation of the management plan or amendment for purposes of deciding if it is consistent with the national standards and sufficient in scope and substance to warrant review under this subsection and—

[(i) if that decision is affirmative, implement subparagraphs (B), (C), and (D) with respect to the plan or amendment, or

[(ii) if that decision is negative—

[(I) disapprove the plan or amendment, and

[(II) notify the Council, in writing, of the disapproval and of those matters specified in subsection (b)(2)(A), (B) and (C) as they relate to the plan or amendment;

[(B) immediately commence a review of the management plan or amendment to determine whether it is consistent with the national standards, the other provisions of this Act, and any other applicable law;

[(C) immediately publish in the Federal Register a notice stating that the plan or amendment is available and that written data, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 60-day period beginning on the receipt date; and

[(D) by the 15th day after the receipt date—

[(i) make such changes in the proposed regulations submitted for the plan or amendment under section 303(c) [16 U.S.C. 1853(c)] as may be necessary for the implementation of the plan, and

[(ii) publish such proposed regulations, including any changes made thereto under clause (i), in the Federal Register together with an explanation of those changes which are substantive.

[(2) In undertaking the review required under paragraph (1)(B), the Secretary shall—

[(A) take into account the data, views, and comments received from interested persons;

[(B) consult with the Secretary of State with respect to foreign fishing; and

[(C) consult with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea and to fishery access adjustments referred to in section 303(a)(6) [16 U.S.C. 1853(a)(6)].

[(3)(A) The Secretary shall take action under this section on any fishery management plan or amendment to a plan which the Council characterizes as being a final plan or amendment.

[(B) For purposes of this section, the term “receipt date” means the 5th day after the day on which a Council transmits to the Secretary a fishery management plan, or an amendment to a plan, that it characterizes as a final plan or amendment.

[(b) REVIEW BY SECRETARY.—

[(1) A plan or amendment shall take effect and be implemented in accordance with section 305(a) [16 U.S.C. 1855(a)] if—

[(A) the Secretary does not notify the Council in writing of—

[(i) his disapproval under subsection (a)(1)(A)(ii), or

[(ii) his disapproval, or partial disapproval, under paragraph (2), of the plan or amendment before the close of the 95th day after the receipt date; or

[(B) at any time subsequent to the 60th day after the receipt date and before such 95th day, the Secretary notifies the Council in writing that he does not intend to disapprove, or partially disapprove, the plan or amendment.

[(2) If after review under subsection (a) the Secretary determines that the plan or amendment is not consistent with the criteria set forth in paragraph (1)(B) of that subsection, the Secretary shall notify the Council in writing of his disapproval or partial disapproval of the plan or amendment. Such notice shall specify—

[(A) the applicable law with which the plan or amendment is inconsistent;

[(B) the nature of such inconsistency; and

[(C) recommendations concerning the actions that could be taken by the Council to conform such plan or amendment to the requirements of applicable law.

[(3)(A) If the Secretary disapproves a proposed plan or amendment under subsection (a)(1)(A)(ii), or disapproves, or partially disapproves, a proposed plan or amendment under paragraph (2), the Council may submit a revised plan or amendment, accompanied by appropriately revised proposed regulations, to the Secretary.

[(B) After the Secretary receives a revised plan or amendment under subparagraph (A) or (C)(ii), the Secretary shall immediately—

[(i) commence a review of the plan or amendment to determine whether it complies with the criteria set forth in subsection (a)(1)(B);

[(ii) publish in the Federal Register a notice stating that the revised plan or amendment is available and that written data, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 30-day period beginning on the date (hereinafter in this paragraph referred to as the “revised receipt date”) the plan or amendment was submitted to the Secretary under subparagraph (A) or (C)(ii); and

[(iii) review the revised proposed regulations, if any, submitted by the Council and make such changes to them as may be necessary for the implementation of the plan, and thereafter publish such revised proposed regulations (as so changed) in the Federal Register together with an explanation of each of such changes that is substantive.

[(C)(i) Before the close of the 60th day after the revised receipt date, the Secretary, after taking into account any data, views, or comments received under subparagraph (B)(ii), shall complete the review required under subparagraph (B)(i) and determine whether the plan or amendment complies with the criteria set forth in subsection (a)(1)(B). If the Secretary determines that a plan or amendment is not in compliance with such criteria, he shall immediately notify the Council of his disapproval of the plan or amendment.

[(ii) After notifying a Council of disapproval under clause (i), the Secretary shall promptly provide to the Council a written statement of the reasons on which the disapproval was based and advise the Council that it may submit a further revised plan or amendment, together with appropriately revised proposed regulations, for review and determination under this paragraph.

[(D) A revised plan or amendment shall take effect and be implemented in accordance with section 305(a) [16 U.S.C. 1855(a)] if the Secretary does not notify the Council, in writing, by the close of the 60th day after the revised receipt date of his disapproval of the plan or amendment.]

(a) *REVIEW OF PLANS.*—

(1) *Upon transmittal by the Council to the Secretary of a fishery management plan or plan amendment, the Secretary shall—*

(A) immediately commence a review of the plan or plan amendment to determine whether it is consistent with the national standards, the other provisions of this Act, and any other applicable law; and

(B) immediately publish in the Federal Register a notice stating that the plan or plan amendment is available and that written data, views, or comments of interested persons on the plan or amendment may be submitted to the Sec-

retary during the 60-day period beginning on the date the notice is published.

(2) In undertaking the review required under paragraph (1), the Secretary shall—

(A) take into account the data, views, and comments received from interested persons;

(B) consult with the Secretary of State with respect to foreign fishing; and

(C) consult with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea and to fishery access adjustments referred to in section 303(a)(6).

(3) The Secretary shall approve, disapprove, or partially approve a plan or plan amendment within 30 days of the end of the comment period under paragraph (1) by written notice to the Council. A notice of disapproval or partial approval shall specify—

(A) the applicable law with which the plan or amendment is inconsistent;

(B) the nature of such inconsistencies; and

(C) recommendations concerning the actions that could be taken by the Council to conform such plan or amendment to the requirements of applicable law.

(4) If the Secretary disapproves or partially approves a plan or amendment, the Council may submit a revised plan or amendment to the Secretary for review under this subsection.

(5) For purposes of this subsection and subsection (b), the term “immediately” means on or before the 5th day after the day on which a Council transmits to the Secretary a plan, amendment, or proposed regulation that the Council characterizes as final.

(b) REVIEW OF REGULATIONS.—

(1) Upon transmittal by the Council to the Secretary of proposed regulations prepared under section 303(c), the Secretary shall immediately initiate an evaluation of the proposed regulations to determine whether they are consistent with the fishery management plan, this Act and other applicable law. Within 15 days of initiating such evaluation the Secretary shall make a determination and—

(A) if that determination is affirmative, the Secretary shall publish such regulations, with such technical changes as may be necessary for clarity and an explanation of those changes, in the Federal Register for a public comment period of 15 to 60 days; or

(B) if that determination is negative, the Secretary shall notify the Council in writing of the inconsistencies and provide recommendations on revisions that would make the proposed regulations consistent with the fishery management plan, this Act, and other applicable law.

(2) Upon receiving a notification under paragraph (1)(B), the Council may revise the proposed regulations and submit them to the Secretary for reevaluation under paragraph (1).

(3) The Secretary shall promulgate final regulations within 30 days after the end of the comment period under paragraph

(1)(A). *The Secretary shall consult with the Council before making any revisions to the proposed regulations, and must publish in the Federal Register an explanation of any differences between the proposed and final regulations.*

(c) PREPARATION BY SECRETARY.—

(1) The Secretary may prepare a fishery management plan, with respect to any **fishery,** *fishery (other than a fishery to which section 302(a)(3) applies)*, or any amendment to any such plan, in accordance with the national standards, the other provisions of this Act, and any other applicable law, if—

(A) the appropriate Council fails to develop and submit to the Secretary, after a reasonable period of time, a fishery management plan for such fishery, or any necessary amendment to such a plan, if such fishery requires conservation and management; or

(B) the Secretary disapproves or partially disapproves any such plan or amendment, or disapproves a revised plan or amendment, and the Council involved fails to submit a revised or further revised plan or amendment, as the case may be.

【In preparing any such plan or amendment, the Secretary shall consult with the Secretary of State with respect to foreign fishing and with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea. The Secretary shall also prepare such proposed regulations as he deems necessary or appropriate to carry out each plan or amendment prepared by him under this paragraph.】

【(2)(A) Whenever, under paragraph (1), the Secretary prepares a fishery management plan or amendment, the Secretary shall immediately—

【(i) submit such plan or amendment, and proposed regulations to implement such plan or amendment, to the appropriate Council for consideration and comment;

【(ii) publish in the Federal Register a notice stating that the plan or amendment is available and that written data, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 60-day period beginning on the date the plan or amendment was submitted under clause (i); and

【(iii) by the 15th day after the date of submission under clause (i), submit for publication in the Federal Register the proposed regulations to implement the plan or amendment.

【(B) The appropriate Council must submit its comments and recommendations, if any, regarding the plan or amendment to the Secretary before the close of the 60-day period referred to in subparagraph (A)(ii). After the close of such 60-day period, the Secretary, after taking into account any such comments and recommendations, as well as any views, data, or comments submitted under subparagraph (A)(ii), may implement such plan or amendment under section 305(a) [16 U.S.C. 1855(a)].】

(2) In preparing any plan or amendment under this subsection, the Secretary shall consult with the Secretary of State with respect to foreign fishing and with the Secretary of the de-

partment in which the Coast Guard is operating with respect to enforcement at sea.

(3) Notwithstanding paragraph (1), the Secretary may not include in any fishery management plan, or any amendment to any such plan, prepared by him *under this subsection*, a provision establishing a limited access **【system described in section 303(b)(6) [16 U.S.C. 1853(b)(6)]** *system, including any individual fishing quota system*, unless such system is first approved by a majority of the voting members, present and voting, of each appropriate Council.

(d) ESTABLISHMENT OF FEES.—(1) The Secretary shall by regulation establish the level of any fees which are authorized to be charged pursuant to section 303(b)(1) [16 U.S.C. 1853(b)(1)]. The Secretary may enter into a cooperative agreement with the States concerned under which the States administer the permit system and the agreement may provide that all or part of the fees collected under the system shall accrue to the States. The level of fees charged under this subsection shall not exceed the administrative costs incurred in issuing the permits.

(2) *Notwithstanding paragraph (1), the Secretary is authorized and shall collect a fee of up to 3 percent of the annual ex-vessel value of fish harvested under any individual fishing quota program or community development quota program to recover the costs directly related to the management and enforcement of such program. Fees collected under this paragraph shall be in addition to any other fees charged under this Act and shall be an offsetting collection available only to the Secretary for the purposes of administering and implementing this Act in the fishery in which the fees were collected.*

[(e) FISHERIES RESEARCH.—

[(1) The Secretary shall initiate and maintain, in cooperation with the Councils, a comprehensive program of fishery research to carry out and further the purposes, policy, and provisions of this Act. Such program shall be designed to acquire knowledge and information, including statistics, on fishery conservation and management and on the economics of the fisheries.

[(2) Within one year after the date of enactment of the Fishery Conservation Amendments of 1990, and at least every three years thereafter, the Secretary shall develop and publish in the Federal Register a strategic plan for fisheries research for the five years immediately following such publication. The plan shall—

[(A) identify and describe a comprehensive program with a limited number of priority objectives for research in each of the areas specified in paragraph (2);

[(B) indicate the goals and timetables for the program described in subparagraph (A); and

[(C) provide a role for affected commercial fishermen in such research, including involvement in field testing.

[(3) The areas of research referred to in paragraph (1) are as follows:

[(A) Research to support fishery conservation and management, including research on the economics of fisheries

and biological research concerning the interdependence of fisheries or stocks of fish, the impact of pollution on fish populations, the impact of wetland and estuarine degradation, and other matters bearing upon the abundance and availability of fish.

[(B) Conservation engineering research, including the study of fish behavior and the development and testing of new gear technology and fishing techniques to minimize the harvest of nontarget species and promote efficient harvest of target species.

[(C) Information management research, including the development of a fishery information base and an information management system that will permit the full use of data in the support of effective fishery conservation and management.

[(4) In developing the plan required under paragraph (1), the Secretary shall consult with relevant Federal agencies, scientific and technical experts, and other interested persons, public and private, and shall publish a proposed plan in the Federal Register for the purpose of receiving public comment on the plan. The Secretary shall ensure that affected commercial fishermen are actively involved in the development of the portion of the plan pertaining to conservation engineering research. Upon final publication in the Federal Register, the plan shall be submitted by the Secretary to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives.]

(e) *REBUILDING OVERFISHED FISHERIES.*—

(1) *The Secretary shall report annually to the Congress and the Councils on the status of fisheries within each Council's geographical area of authority and identify those fisheries that are overfished or are approaching a condition of being overfished. For those fisheries managed under a fishery management plan or international agreement, the status shall be determined using the criteria for overfishing specified in such plan or agreement. A fishery shall be classified as approaching a condition of being overfished if, based on trends in fishing effort, fishery resource size, and other appropriate factors, the Secretary estimates that the fishery will become overfished within two years.*

(2) *In addition, if the Secretary determines at any time that a fishery is overfished, the Secretary immediately shall notify the appropriate Council and request that action be taken to end overfishing in the fishery and to implement conservation and management measures to rebuild affected stocks of fish. The Secretary shall publish each notice under this paragraph in the Federal Register.*

(3) *Within one year of an identification or notification under this subsection, the Council (or the Secretary, consistent with section 304(g) and where practicable for fisheries under section 302(a)(3)) shall prepare a fishery management plan, a plan amendment, or proposed regulations for fisheries under the authority of such Council or the Secretary—*

(A) to end overfishing in the fishery and to rebuild affected stocks of fish; or

(B) to prevent overfishing from occurring in the fishery whenever such fishery is identified as approaching an overfished condition.

(4) For a fishery that is overfished, any fishery management plan, amendment or proposed regulations prepared under this section shall—

(A) specify a time period for ending overfishing and rebuilding the fishery that shall—

(i) be as short as possible, taking into account the status and biology of any overfished stocks of fish, the needs of fishing communities and other economic interests, recommendations by international organizations in which the United States participates and the interaction of the overfished stock of fish within the marine ecosystem; and

(ii) not exceed 10 years, except in cases where the biology of the stock of fish or other environmental conditions dictate otherwise.

(B) allocate both overfishing restrictions and recovery benefits fairly and equitably among sectors of the fishery; and

(C) for fisheries managed under an international agreement, reflect the traditional participation by fishermen of the United States in the fishery relative to other nations.

(5) If, within the one-year period beginning on the date of identification or notification, the Council does not submit to the Secretary a fishery management plan, plan amendment or proposed regulations under paragraph (3)(A), the Secretary shall within nine months prepare under subsection (c) a fishery management plan or plan amendment to stop overfishing and rebuild affected stocks of fish.

(6) During the development of a fishery management plan, a plan amendment, or proposed regulations under this subsection, the Council may request the Secretary to implement interim measures, to be replaced by such plan, amendment or regulations, to reduce overfishing. Such measures, if otherwise in compliance with the provisions of this Act, may be implemented even though they are not sufficient by themselves to stop overfishing of a fishery.

(7) The Secretary shall review any fishery management plan, plan amendment or regulations implemented under this subsection at routine intervals that may not exceed two years. If the Secretary finds as a result of the review that such plan, amendment or regulations have not resulted in adequate progress toward ending overfishing and rebuilding affected fish stocks, the Secretary shall—

(A) in the case of a fishery to which section 302(a)(3) applies, immediately make revisions necessary to achieve adequate progress; or

(B) for all other fisheries, immediately notify the appropriate Council under paragraph (2).

(f) FISHERIES UNDER AUTHORITY OF MORE THAN ONE COUNCIL.—

(1) Except as provided in paragraph (3), if any fishery extends beyond the geographical area of authority of any one Council, the Secretary may—

(A) designate which Council shall prepare the fishery management plan for such fishery and any amendment to such plan; or

(B) may require that the plan and amendment be prepared jointly by the Councils concerned.

No jointly prepared plan or amendment may be submitted to the Secretary unless it is approved by a majority of the voting members, present and voting, of each Council concerned.

(2) The Secretary shall establish the boundaries between the geographical areas of authority of adjacent Councils.

[(3)(A) The Secretary shall have authority over any highly migratory species fishery that is within the geographical area of authority of more than one of the following Councils: New England Council, Mid-Atlantic Council, South Atlantic Council, Gulf Council, and Caribbean Council.

[(B) In accordance with the provisions of this Act and any other applicable law, the Secretary shall—

[(i) identify research and information priorities, including observer requirements and necessary data collection and analysis for the conservation and management of highly migratory species;

[(ii) prepare and amend fishery management plans with respect to highly migratory species fisheries to which this paragraph applies; and

[(iii) diligently pursue, through international entities (such as the International Commission for the Conservation of Atlantic Tunas), international fishery management measures with respect to fishing for highly migratory species.

[(C) In preparing or amending any fishery management plan under this paragraph, the Secretary shall—

[(i) conduct public hearings, at appropriate times and in appropriate locations in the geographical areas concerned, so as to allow interested persons an opportunity to be heard in the preparation and amendment of the plan;

[(ii) consult with and consider the comments and views of commissioners and advisory groups appointed under Acts implementing relevant international fishery agreements pertaining to highly migratory species;

[(iii) consult with and consider the comments and views of affected Councils;

[(iv) evaluate the likely effects, if any, of conservation and management measures on participants in the fisheries affected by the plan and minimize, to the extent practicable, any disadvantage to United States fishermen in relation to foreign competitors; and

[(v) review, on a continuing basis (and promptly whenever a recommendation pertaining to fishing for highly migratory species has been made under a relevant international fishery agreement), and revise as

appropriate, the conservation and management measures included in the plan.

[(D) Conservation and management measures contained in any fishery management plan under this paragraph shall—

[(i) take into consideration traditional fishing patterns of fishing vessels of the United States and the operating requirements of the fisheries;

[(ii) be fair and equitable in allocating fishing privileges among United States fishermen and not have economic allocation as the sole purpose; and

[(iii) promote international conservation.

[(E) With respect to a highly migratory species for which the United States is authorized to harvest an allocation or quota under a relevant international fishery agreement, the Secretary shall provide fishing vessels of the United States with a reasonable opportunity to harvest such allocation or quota.

[(F) In implementing the provisions of this paragraph, the Secretary shall consult with—

[(i) the Secretary of State;

[(ii) commissioners and advisory groups appointed under Acts implementing relevant international fishery agreements pertaining to highly migratory species; and

[(iii) appropriate Councils.]

[(g) INCIDENTAL HARVEST RESEARCH.—

[(1) Within 9 months after the date of enactment of the Fishery Conservation Amendments of 1990, the Secretary shall, after consultation with the Gulf of Mexico Fishery Management Council and South Atlantic Fishery Management Council, establish by regulation a 3-year program to assess the impact on fishery resources of incidental harvest by the shrimp trawl fishery within the authority of such Councils.

[(2) The program established pursuant to paragraph (1) shall provide for the identification of stocks of fish which are subject to significant incidental harvest in the course of normal shrimp trawl fishing activity.

[(3) For stocks of fish identified pursuant to paragraph (2), with priority given to stocks which (based upon the best available scientific information) are considered to be overfished, the Secretary shall conduct—

[(A) a program to collect and evaluate data on the nature and extent (including the spatial and temporal distribution) of incidental mortality of such stocks as a direct result of shrimp trawl fishing activities;

[(B) an assessment of the status and condition of such stocks, including collection of information which would allow the estimation of life history parameters with sufficient accuracy and precision to support sound scientific evaluation of the effects of various management alternatives on the status of such stocks; and

[(C) a program of data collection and evaluation for such stocks on the magnitude and distribution of fishing mortal-

ity and fishing effort by sources of fishing mortality other than shrimp trawl fishing activity.

[(4) The Secretary shall, in cooperation with affected interests, commence a program to design, and evaluate the efficacy of, technological devices and other changes in fishing technology for the reduction of incidental mortality of nontarget fishery resources in the course of shrimp trawl fishing activity. Such program shall take into account local conditions and include evaluation of any reduction in incidental mortality, as well as any reduction or increase in the retention of shrimp in the course of normal fishing activity.

[(5) The Secretary shall, upon completion of the programs required by this subsection, submit a detailed report on the results of such programs to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives.

[(6)(A) Except as provided in this paragraph, the Secretary may not implement any measures under this Act to reduce incidental mortality of nontarget fishery resources in the course of shrimp trawl fishing which would restrict the period during which shrimp are harvested or would require the use of any technological device or other change in fishing technology.

[(B) The prohibition contained in subparagraph (A) shall cease on April 1, 1994.

[(C) This paragraph does not apply to any law or regulation in effect on the date of enactment of this paragraph [enacted Nov. 28, 1990], nor does it limit in any way the Secretary's authority to take action, including any limitation on entry permitted by this Act, for the conservation and management of the shrimp fishery resource.]

(g) *ATLANTIC HIGHLY MIGRATORY SPECIES.*—*The Secretary shall prepare a fishery management plan or plan amendment with respect to any highly migratory species fishery to which section 302(a)(3) applies that requires conservation and management, in accordance with the national standards, the other provisions of this Act, and any other applicable law. In preparing and implementing any such plan or amendment, the Secretary shall—*

(1) conduct public hearings, at appropriate times and in appropriate locations in the geographical areas concerned, so as to allow interested persons an opportunity to be heard in the preparation and amendment of the plan and any regulations implementing the plan;

(2)(A) consult with the Secretary of State with respect to foreign fishing and with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea; and

(B) consult with and consider the comments and views of affected Councils, as well as commissioners and advisory groups appointed under Acts implementing relevant international fishery agreements pertaining to highly migratory species and the advisory panel established under section 302(g);

(3) establish an advisory panel under section 302(g) for each fishery management plan to be prepared under this paragraph;

(4) *evaluate the likely effects, if any, of conservation and management measures on participants in the affected fisheries and minimize, to the extent practicable, any disadvantage to United States fishermen in relation to foreign competitors;*

(5) *with respect to a highly migratory species for which the United States is authorized to harvest an allocation, quota, or at a fishing mortality level under a relevant international fishery agreement, provide fishing vessels of the United States with a reasonable opportunity to harvest such allocation, quota, or fishing mortality level;*

(6) *review, on a continuing basis (and promptly whenever a recommendation pertaining to fishing for highly migratory species has been made under a relevant international fishery agreement), and revise as appropriate, the conservation and management measures included in the plan;*

(7) *diligently pursue, through international entities (such as the International Commission for the Conservation of Atlantic Tunas), comparable international fishery management measures with respect to fishing for highly migratory species; and*

(8) *ensure that conservation and management measures adopted under this paragraph—*

(A) *promote international conservation of the affected fishery;*

(B) *take into consideration traditional fishing patterns of fishing vessels of the United States and the operating requirements of the fisheries;*

(C) *are fair and equitable in allocating fishing privileges among United States fishermen and not have economic allocation as the sole purpose;*

(D) *minimize the discarding of Atlantic highly migratory species which cannot be returned to the sea alive; and*

(E) *promote, to the extent practicable, implementation of scientific research programs that include the tag and release of Atlantic highly migratory species.*

(h) *REVIEW OF SECRETARIAL PLAN.—*

(1)(A) *Whenever the Secretary prepares a fishery management plan or plan amendment under this section, the Secretary shall immediately—*

(i) *for a plan or amendment prepared under subsection (c), submit such plan or amendment to the appropriate Council for consideration and comment; and*

(ii) *publish in the Federal Register a notice stating that the plan or amendment is available and that written data, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 60-day period beginning on the date the notice is published.*

(B) *Whenever a plan or amendment is submitted under paragraph (1)(A)(i), the appropriate Council must submit its comments and recommendations, if any, regarding the plan or amendment to the Secretary before the close of the 60-day period referred to in subparagraph (A)(ii). After the close of such 60-day period, the Secretary, after taking into account any such comments and recommendations, as well as any views, data, or*

comments submitted under subparagraph (A)(ii), may adopt such plan or amendment.

(2) The Secretary may propose regulations in the Federal Register to implement any plan or amendment prepared by the Secretary. The comment period on proposed regulations shall be 60 days, except that the Secretary may shorten the comment period on minor revisions to existing regulations.

(3) The Secretary shall promulgate final regulations within 30 days after the end of the comment period under paragraph (3). The Secretary must publish in the Federal Register an explanation of any substantive differences between the proposed and final rules. All final regulations must be consistent with the plan, with the national standards and other provisions of this Act, and with any other applicable law.

§ 1855. Implementation of fishery management plans

[(a) IMPLEMENTATION.—The Secretary shall promulgate each regulation that is necessary to carry out a plan or amendment—

[(1) within 110 days after the plan or amendment was received by him for action under section 304(a) [16 U.S.C. 1854(a)], if such plan or amendment takes effect under section 304(b)(1) [16 U.S.C. 1854(b)(1)];

[(2) within 75 days after a revised plan or amendment was received by him under section 304(b) [16 U.S.C. 1854(b)], if such plan or amendment takes effect under paragraph (3)(D) of such section; or

[(3) within such time as he deems appropriate in the case of a plan or amendment prepared by him under section 304(c) or (f)(3) [16 U.S.C. 1854(c) or (f)(3)].**]**

§ 1855. Other requirements and authority

(a) GEAR EVALUATION AND NOTIFICATION OF ENTRY.—

(1) Not later than 18 months after the date of enactment of the Sustainable Fisheries Act, the Secretary shall publish in the Federal Register, after notice and an opportunity for public comment, a list of all fisheries

(A) under the authority of each Council and all fishing gear used in such fisheries, based on information submitted by the Councils under section 303(a); and

(B) to which section 302(a)(3) applies and all fishing gear used in such fisheries.

(2) The Secretary shall include with such list guidelines for determining when fishing gear or a fishery is sufficiently different from those listed as to require notification under paragraph (3).

(3) Effective 180 days after the publication of such list, no person or vessel shall employ fishing gear or engage in a fishery not included on such list without giving 90 days advance written notice to the appropriate Council, or the Secretary with respect to a fishery to which section 302(a)(3) applies. A signed return receipt shall serve as adequate evidence of such notice and as the date upon which the 90-day period begins.

(4) A Council may submit to the Secretary any proposed changes to such list or such guidelines the Council deems appropriate. The Secretary shall publish a revised list, after notice

and an opportunity for public comment, upon receiving any such proposed changes from a Council.

(5) A Council may request the Secretary to promulgate emergency regulations under subsection (c) to prohibit any persons or vessels from using an unlisted fishing gear or engaging in an unlisted fishery if the appropriate Council, or the Secretary for fisheries to which section 302(a)(3) applies, determines that such unlisted gear or unlisted fishery would compromise the effectiveness of conservation and management efforts under this Act.

(b) *FISH HABITAT.*—

(1)(A) The Secretary shall, within six months of the date of enactment of the Sustainable Fisheries Act, establish guidelines to assist the Councils in the description and identification of essential fish habitat in fishery management plans (including adverse impacts on such habitat) and the actions which should be considered to ensure the conservation and enhancement of such habitat, and set forth a schedule for the amendment of fishery management plans to include the identification of essential fish habitat.

(B) The Secretary shall provide each Council with recommendations and information regarding each fishery under that Council's authority to assist it in the identification of essential fish habitat, the adverse impacts on that habitat, and the actions that should be considered to ensure the conservation and enhancement of that habitat.

(C) The Secretary shall review programs administered by the Department of Commerce and ensure that any relevant programs further the conservation and enhancement of essential fish habitat.

(D) The Secretary shall coordinate with and provide information to other Federal agencies to further the conservation and enhancement of essential fish habitat.

(2) Each Federal agency shall consult with the Secretary with respect to any action undertaken, or proposed to be undertaken by such agency that may adversely affect any essential fish habitat identified under this Act.

(3) *Each Council*—

(A) may comment on and make recommendations to the Secretary and any Federal or State agency concerning any activity undertaken, or proposed to be undertaken, by any Federal or State agency that, in the view of the Council, may affect the habitat, including essential fish habitat, of a fishery resource under its authority; and

(B) shall comment on and make recommendations to the Secretary and any Federal or State agency concerning any such activity that, in the view of the Council, is likely to substantially affect the habitat, including essential fish habitat, of an anadromous fishery resource under its authority.

(4)(A) If the Secretary receives information from a Council or Federal or State agency or determines from other sources that an action undertaken, or proposed to be undertaken by any State or Federal agency would adversely affect any essential

fish habitat identified under this Act, the Secretary shall recommend to such agency measures that can be taken by such agency to conserve such habitat.

(B) Within 30 days after receiving a recommendation under paragraph (4)(A), a Federal agency shall provide a detailed response, in writing, to the commenting Council and the Secretary regarding the matter. The response shall include a description of measures being considered by the agency for avoiding, mitigating, or offsetting the impact of the activity on such habitat. In the case of a response that is inconsistent with the recommendations of the Secretary, the Federal agency shall explain its reasons for not following the recommendations.

(c) EMERGENCY ACTIONS.—

(1) If the Secretary finds that an emergency exists involving any fishery, he may promulgate emergency regulations necessary to address the emergency, without regard to whether a fishery management plan exists for such fishery.

(2) If a Council finds that an emergency exists involving any fishery within its jurisdiction, whether or not a fishery management plan exists for such fishery—

(A) the Secretary shall promulgate emergency regulations under paragraph (1) to address the emergency if the Council, by unanimous vote of the members who are voting members, requests the taking of such action; and

(B) the Secretary may promulgate emergency regulations under paragraph (1) to address the emergency if the Council, by less than a unanimous vote, requests the taking of such action.

[(3) Any emergency regulation which changes any existing fishery management plan or amendment shall be treated as an amendment to such plan for the period in which such regulation is in effect. Any emergency regulation promulgated under this subsection—

[(A) shall be published in the Federal Register together with the reasons therefor;

[(B) shall remain in effect for not more than 90 days after the date of such publication, except that any such regulation may, by agreement of the Secretary and the Council, be promulgated for one additional period of not more than 90 days; and

[(C) may be terminated by the Secretary at an earlier date by publication in the Federal Register of a notice of termination, except for emergency regulations promulgated under paragraph (2) in which case such early termination may be made only upon the agreement of the Secretary and the Council concerned.]

(3) Any emergency regulation which changes an existing fishery management plan shall be treated as an amendment to such plan for the period in which such regulation is in effect. Any emergency regulation promulgated under this subsection—

(A) shall be published in the Federal Register together with the reasons therefor;

(B) shall, except as provided in subparagraph (C), remain in effect for not more than 180 days after the date of

publication, and may be extended by publication in the Federal Register for an additional period of not more than 180 days, provided the public has had an opportunity to comment on the emergency regulation, and, in the case of a Council recommendation for emergency regulations, the Council is actively preparing a fishery management plan, amendment, or proposed regulations to address the emergency on a permanent basis;

(C) that responds to a public health emergency may remain in effect until the circumstances that created the emergency no longer exist, provided that the Secretary of Health and Human Services concurs with the Secretary's action and the public has an opportunity to comment after the regulation is published; and

(D) may be terminated by the Secretary at an earlier date by publication in the Federal Register of a notice of termination, except for emergency regulations promulgated under paragraph (2) in which case such early termination may be made only upon the agreement of the Secretary and the Council concerned.

(d) **RESPONSIBILITY OF SECRETARY.**—The Secretary shall have general responsibility to carry out any fishery management plan or amendment approved or prepared by him, in accordance with the provisions of this Act. The Secretary may promulgate such regulations, in accordance with section 553 of title 5, United States Code, as may be necessary to discharge such responsibility or to carry out any other provision of this Act.

(e) **EFFECT OF CERTAIN LAWS ON CERTAIN TIME REQUIREMENTS.**—The Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and Executive Order Numbered [12291, dated February 17, 1981,] 12866, dated September 30, 1993, shall be complied with within the time limitations specified in subsection (c) or section 304(a) and (b) [16 U.S.C. 1854(a), (b)] as they apply to the functions of the Secretary under such provisions.

[(b)] (f) **JUDICIAL REVIEW.**—

(1) Regulations promulgated by the Secretary under this Act and actions described in paragraph (2) shall be subject to judicial review to the extent authorized by, and in accordance with, chapter 7 of title 5, United States Code [5 U.S.C. 701 et seq.], if a petition for such review is filed within 30 days after the date on which the regulations are promulgated or the action is published in the Federal Register, as applicable; except that—

(A) section 705 of such title is not applicable, and

(B) the appropriate court shall only set aside any such regulation or action on a ground specified in section 706(2)(A), (B), (C), or (D) of such title.

(2) The actions referred to in paragraph (1) are actions that are taken by the Secretary under regulations which implement a fishery management plan, including but not limited to actions that establish the date of closure of a fishery to commercial or recreational fishing.

(3)(A) Notwithstanding any other provision of law, the Secretary shall file a response to any petition filed in accordance

with paragraph (1), not later than 45 days after the date the Secretary is served with that petition, except that the appropriate court may extend the period for filing such a response upon a showing by the Secretary of good cause for that extension.

(B) A response of the Secretary under this paragraph shall include a copy of the administrative record for the regulations that are the subject of the petition.

(4) Upon a motion by the person who files a petition under this subsection, the appropriate court shall assign the matter for hearing at the earliest possible date and shall expedite the matter in every possible way.

(g) *NEGOTIATED CONSERVATION AND MANAGEMENT MEASURES.*—

(1)(A) *A Council or the Secretary may, in accordance with regulations promulgated by the Secretary pursuant to this paragraph, establish a fishery negotiation panel to assist in the development of specific conservation and management measures for a fishery under authority of such Council or the Secretary.*

(B) *No later than 180 days after the enactment of this section, the Secretary shall promulgate regulations establishing procedures, developed in cooperation with the Administrative Conference of the United States, for the establishment and operation of fishery negotiation panels. Such procedures shall be comparable to the procedures for negotiated rulemaking established by subchapter III of chapter 5 of title 5, United States Code.*

(2) *Upon receipt of a report containing proposed conservation and management measures from a negotiation panel convened under this subsection, the report shall be published in the Federal Register for public comment.*

(3) *Nothing in this subsection shall be construed to require either a Council or the Secretary, whichever is appropriate, to include all or any portion of a report from a negotiation panel established under this subsection in a fishery management plan or plan amendment for the fishery for which the panel was established.*

(h) *CENTRAL REGISTRY SYSTEM FOR LIMITED ACCESS SYSTEM PERMITS.*—

(1) *Within 6 months after the date of enactment of the Sustainable Fishery Act, the Secretary shall establish an exclusive central registry system (which may be administered on a regional basis) for any limited access system permits established under section 303(b)(6) or other Federal law, including individual fishing quotas, which shall provide for the registration of title to, and interests in, such permits, as well as for procedures for changes in the registration of title to such permits upon the occurrence of involuntary transfers, judicial or nonjudicial foreclosure of interests, enforcement of judgments thereon, and related matters deemed appropriate by the Secretary. Such registry system shall—*

(A) *provide a mechanism for filing notice of a nonjudicial foreclosure or enforcement of a judgment by which the holder of a senior security interest acquires or conveys ownership of a permit, and in the event of a nonjudicial foreclosure, by which the interests of the holders of junior security interests are released when the permit is transferred;*

(B) provide for public access to the information filed under such system, notwithstanding section 402(b); and

(C) provide such notice and other requirements of applicable law that the Secretary deems necessary for an effective registry system.

(2) The Secretary shall promulgate such regulations as may be necessary to carry out this subsection, after consulting with the Councils and providing an opportunity for public comment. The Secretary is authorized to contract with non-federal entities to administer the central registry system.

(3) To be effective and perfected against any person except the transferor, its heirs and devisees, and persons having actual notice thereof, all security interests, and all sales and other transfers of permits described in paragraph (1), shall be registered in compliance with the regulations promulgated under paragraph (2). Such registration shall constitute the exclusive means of perfection of title to, and security interests in, such permits, except for federal tax liens thereon, which shall be perfected exclusively in accordance with section 6323 of the Internal Revenue Code of 1986 (26 U.S.C. 6323).

(4) The priority of security interests shall be determined in order of filing, the first filed having the highest priority. A validly-filed security interest shall remain valid and perfected notwithstanding a change in residence or place of business of the owner of record. For the purposes of this subsection, "security interest" shall include security interests, assignments, liens and other encumbrances of whatever kind.

(5) Notwithstanding section 304(d)(1), the Secretary may collect a reasonable fee of not more than one-half of one percent of the value of limited access system permits upon registration and transfer to recover the costs of administering the central registry system.

(i) **ALASKA AND WESTERN PACIFIC COMMUNITY DEVELOPMENT PROGRAMS.**—

(1)(A) The North Pacific Council and the Secretary shall establish a western Alaska community development quota program under which a percentage of the total allowable catch of any Bering Sea fishery is allocated to the program.

(B) To be eligible to participate in the western Alaska community development quota program under paragraph (1), a community shall—

(i) be located within 50 nautical miles from the baseline from which the breadth of the territorial sea is measured along the Bering Sea coast from the Bering Strait to the western most of the Aleutian Islands, or an island within the Bering Sea;

(ii) not be located on the Gulf of Alaska coast of the north Pacific Ocean;

(iii) meet criteria developed by the Governor of Alaska, approved by the Secretary, and published in the Federal Register; and

(iv) be certified by the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act to be a Native village;

(v) consist of residents who conduct more than one-half of their current commercial or subsistence fishing effort in the waters of the Bering Sea and Aleutian Islands management area; and

(vi) not have previously developed harvesting or processing capability sufficient to support substantial participation in the groundfish fisheries in the Bering Sea, unless the community can show that the benefits from an approved Community Development Plan would be the only way for the community to realize a return from previous investments.

(C)(i) During the fiscal years for which funds are authorized under section 4, the North Pacific Council may not recommend to the Secretary any fishery management plan, plan amendment, or regulation that allocates to the western Alaska community development quota program a percentage of the total allowable catch of any Bering Sea fishery for which, prior to October 1, 1995, the Council had not recommended that a percentage of the total allowable catch be allocated to such Western Alaska community development quota program.

(ii) During the fiscal years for which funds are authorized under section 4, with respect to a fishery management plan, plan amendment, or regulation for a Bering Sea fishery that—

(I) allocates to the western Alaska community development quota program a percentage of the total allowable catch of such fishery; and

(II) was recommended by the North Pacific Council to the Secretary prior to October 1, 1995, the Secretary shall, notwithstanding any expiration date in such plan, plan amendment, or regulation, allocate to the program a percentage of the total allowable catch that is no greater than the percentage described in such plan or plan amendment.

(D) The Secretary shall deduct from any fees collected under section 304(d)(2) for fish harvested under the western Alaska community development quota program costs incurred by fishing vessels in the program for observer or reporting requirements which are in addition to observer or reporting requirements of other fishing vessels in the fishery in which the allocation to such program has been made.

(2)(A) The Western Pacific Council and the Secretary may establish a western Pacific community development program which may include an allocation of a percentage of the total catch of any fishery, limited entry permits, or other quotas related to vessel size and fishing zones to western Pacific communities that participate in the program.

(B) To be eligible to participate in the western Pacific community development program, a community shall—

(i) be located within the Western Pacific Regional Fishery Management Area;

(ii) meet criteria developed by the Western Pacific Council, approved by the Secretary and published in the Federal Register, and based on historical fishing practices in and dependence on the fishery, the cultural and social frame-

work relevant to the fishery, and economic barriers to access to the fishery;

(iii) consist of community residents who conduct more than one-half of their current commercial or subsistence fishing effort in the waters within the Western Pacific Regional Management Area;

(iv) not have previously developed harvesting or processing capability sufficient to support substantial participation in the western Pacific Regional Fishery Management Area; and

(v) develop and submit a Community Development Plan to the Western Pacific Council and Secretary.

(C) For the purposes of this subsection—

(i) “Western Pacific Regional Management Area” means the area under the jurisdiction of the Western Pacific Council, or an island within such area; and

(ii) “western Pacific community” means any community located in the Western Pacific Regional Management Area where a majority of the inhabitants are descended from the aboriginal peoples indigenous to the area and in which traditional fishing practices are or have been historically used for subsistence or commercial purposes.

(D) Notwithstanding any other provision of this Act, the Western Pacific Council shall take into account traditional indigenous fishing practices in preparing any fishery management plan.

(E) After the date of enactment of the Sustainable Fisheries Act, no Council may recommend a community development quota program except as provided in this subsection.

§ 1856. State jurisdiction

(a) IN GENERAL.—

(1) Except as provided in subsection (b), nothing in this Act shall be construed as extending or diminishing the jurisdiction or authority of any State within its boundaries.

(2) For the purposes of this Act, except as provided in subsection (b), the jurisdiction and authority of a State shall extend—

(A) to any pocket of waters that is adjacent to the State and totally enclosed by lines delimiting the territorial sea of the United States pursuant to the Geneva Convention on the Territorial Sea and Contiguous Zone or any successor convention to which the United States is a party;

(B) with respect to the body of water commonly known as Nantucket Sound, to the pocket of water west of the seventieth meridian west of Greenwich; and

(C) to the waters of southeastern Alaska (for the purpose of regulating fishing for other than any species of crab) that are—

(i) north of the line representing the international boundary at Dixon Entrance and the westward extension of that line; east of 138 degrees west longitude; and not more than three nautical miles seaward from the coast, from the lines extending from headland to headland across all bays, inlets, straits, passes,

sounds, and entrances, and from any island or group of islands, including the islands of the Alexander Archipelago (except Forrester Island); or

(ii) between the islands referred to in clause (i) (except Forrester Island) and the mainland.

[(3) Except as otherwise provided by paragraph (2), a State may not directly or indirectly regulate any fishing vessel outside its boundaries, unless the vessel is registered under the law of that State.]

(3)(A) *A State may regulate a fishing vessel outside the boundaries of the State if the fishing vessel is registered under the law of that State, and—*

(i) there is no fishery management plan in place for that fishery; or

(ii) if there is a fishery management plan or plan amendment in place for that fishery, the State's laws and regulations are consistent with the purposes of that fishery management plan or plan amendment.

(B) For the purposes of this paragraph, the term 'registered under the law of that State' means that—

(i) the owner, captain, or vessel holds a fishing license, or other document that is a prerequisite to participating in the fishery, issued by the State;

(ii) the vessel is numbered by the State in accordance with chapter 123 of title 46, United States Code; or

(iii) the documentation of the vessel under chapter 121 of title 46, United States Code, identifies the vessel's homeport as located in the State.

(b) EXCEPTION.—

(1) If the Secretary finds, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code [5 U.S.C. 554], that—

(A) the fishing in a fishery, which is covered by a fishery management plan implemented under this Act, is engaged in predominately within the exclusive economic zone and beyond such zone; and

(B) any State has taken any action, or omitted to take any action, the results of which will substantially and adversely affect the carrying out of such fishery management plan;

the Secretary shall promptly notify such State and the appropriate Council of such finding and of his intention to regulate the applicable fishery within the boundaries of such State (other than its internal waters), pursuant to such fishery management plan and the regulations promulgated to implement such plan.

(2) If the Secretary, pursuant to this subsection, assumes responsibility for the regulation of any fishery, the State involved may at any time thereafter apply to the Secretary for reinstatement of its authority over such fishery. If the Secretary finds that the reasons for which he assumed such regulation no longer prevail, he shall promptly terminate such regulation.

(3) *If the State involved requests that a hearing be held pursuant to paragraph (1), the Secretary shall conduct such hearing prior to taking any action under paragraph (1).*

(4) *For any fishery occurring off Alaska for which there is no fishery management plan approved and implemented under this Act, or pursuant to a fishery management plan under this Act, the State of Alaska may enforce its fishing laws and regulations in the exclusive economic zone off Alaska, provided there is a legitimate State interest in the conservation and management of the fishery, until a Federal fishery management plan is implemented for any such fishery which does not allow for such enforcement. Fisheries in the exclusive economic zone off Alaska currently managed pursuant to a Federal fishery management plan shall not be removed from Federal management and placed under State authority without the unanimous consent (except for the Regional Director of the National Marine Fisheries Service) of the North Pacific Council. The preceding sentence shall not be construed to require the North Pacific Council to unanimously vote to continue a fishery management plan under which the State of Alaska is already principally involved in the management or enforcement of a fishery.*

(c) EXCEPTION REGARDING FOREIGN FISH PROCESSING IN INTERNAL WATERS.—

(1) A foreign fishing vessel may engage in fish processing within the internal waters of a State if, and only if—

(A) the vessel is qualified for purposes of this paragraph pursuant to paragraph (4)(C); **[and]**

(B) the owner or operator of the vessel applies to the Governor of the State for, and (subject to paragraph (2)) is granted, permission for the vessel to engage in such processing and the application specifies the species to be **[proc-**essed.] *processed; and*

(C) *the owner or operator of the vessel submits reports on the tonnage of fish received from vessels of the United States and the locations from which such fish were harvested, in accordance with such procedures as the Secretary by regulation shall prescribe.*

(2) The Governor of a State may not grant permission for a foreign fishing vessel to engage in fish processing under paragraph (1)—

(A) for a fishery which occurs in the waters of more than one State or in the exclusive economic zone, except after—

(i) consulting with the appropriate Council and Marine Fisheries Commission, and

(ii) considering any comments received from the Governor of any other State where the fishery occurs; and

(B) if the Governor determines that fish processors within the State have adequate capacity, and will utilize such capacity, to process all of the United States harvested fish from the fishery concerned that are landed in the State.

(3) Nothing in this subsection may be construed as relieving a foreign fishing vessel from the duty to comply with all applicable Federal and State laws while operating within the inter-

nal waters of a State incident to permission obtained under paragraph (1)(B).

(4) For purposes of this subsection—

(A) The term “fish processing” includes, in addition to processing, the performance of any other activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, or transportation.

(B) The phrase “internal waters of a State” means all waters within the boundaries of a State except those seaward of the baseline from which the territorial sea is measured.

(C) A foreign fishing vessel shall be treated as qualified for purposes of paragraph (1) if the foreign nation under which it is flagged will be a party to (i) a governing international fishery agreement or (ii) a treaty described in section 201(b) of this Act (16 U.S.C. 1821(b)) [16 U.S.C. 1821(b)] during the time the vessel will engage in the fish processing for which permission is sought under paragraph (1)(B).

§ 1857. Prohibited acts

It is unlawful—

(1) for any person—

(A) to violate any provision of this Act or any regulation or permit issued pursuant to this Act;

(B) to use any fishing vessel to engage in fishing after the revocation, or during the period of suspension, of an applicable permit issued pursuant to this Act;

(C) to violate any provision of, or regulation under, an applicable governing international fishery agreement entered into pursuant to section 201(c) [16 U.S.C. 1821(c)];

(D) to refuse to permit any officer authorized to enforce the provisions of this Act (as provided for in section 311 [16 U.S.C. 1861]) to board a fishing vessel subject to such person’s control for purposes of conducting any search or inspection in connection with the enforcement of this Act or any regulation, permit, or agreement referred to in subparagraph (A) or (C);

(E) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search or inspection described in subparagraph (D);

(F) to resist a lawful arrest for any act prohibited by this section;

(G) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any fish taken or retained in violation of this Act or any regulation, permit, or agreement referred to in subparagraph (A) or (C);

(H) to interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this section;

(I) to knowingly and willfully submit to a Council, the Secretary, or the Governor of a State false information (including, but not limited to, false information regarding the

capacity and extent to which a United States fish processor, on an annual basis, will process a portion of the optimum yield of a fishery that will be harvested by fishing vessels of the United States) regarding any matter that the Council, Secretary, or Governor is considering in the course of carrying out this Act;

(J) to ship, transport, offer for sale, sell, or purchase, in interstate or foreign commerce, any whole live lobster of the species *Homarus americanus*, that—

(i) is smaller than the minimum possession size in effect at the time under the American Lobster Fishery Management Plan, as implemented by regulations published in part 649 of title 50, Code of Federal Regulations, or any successor to that **[plan,]** *plan* implemented under this title , *or in the absence of any such plan is smaller than the minimum possession size in effect at the time under the Atlantic States Marine Fisheries Commission's American Lobster Fishery Management Plan (and, for purposes of this clause, if the Secretary withdraws the Federal plan or any successor to that plan, and the Atlantic States Marine Fisheries Commission has not implemented a plan to manage the American Lobster Fishery, the minimum possession size in effect at the time the American Lobster Fishery Management Plan was withdrawn shall remain in effect until the Atlantic States Marine Fisheries Commission implements a plan that contains a minimum possession size)*;

(ii) is bearing eggs attached to its abdominal appendages; or

(iii) bears evidence of the forcible removal of extruded eggs from its abdominal appendages;

(K) to **[knowingly steal, or without authorization, to]** *to steal or to negligently and without authorization remove, damage, or tamper with—*

(i) fishing gear owned by another person, which is located in the exclusive economic zone or special areas,

(ii) fish contained in such fishing gear, or to attempt to do so;

[(L) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any observer on a vessel under this Act;]

(L) to forcibly assault, resist, oppose, impede, intimidate, sexually harass, or interfere with any observer on a vessel under this Act, or any data collector employed by the National Marine Fisheries Service or under contract to carry out responsibilities under this Act;

(M) to engage in large-scale driftnet fishing that is subject to the jurisdiction of the United States, including use of a fishing vessel of the United States to engage in such fishing beyond the exclusive economic zone of any nation; **[or]**

(N) to strip pollock of its roe and discard the flesh of the **[pollock.]** *pollock; or*

(O) to knowingly and willfully fail to disclose or falsely disclose any financial interest as required under section 302(j), or to knowingly vote on a Council decision in violation of section 302(j)(7)(A).

(2) for any vessel other than a vessel of the United States, and for the owner or operator of any vessel other than a vessel of the United States, to engage—

【(A) in fishing within the boundaries of any State, except recreational fishing permitted under section 201(j) [16 U.S.C. 1821(j)];】

(A) in fishing within the boundaries of any State, except—

(i) recreational fishing permitted under section 201(i),

(ii) fish processing permitted under section 306(c), or

(iii) transshipment at sea of fish products within the boundaries of any State in accordance with a permit approved under section 204(b)(6)(A)(ii);

(B) in fishing, except recreational fishing permitted under section 201(j) [16 U.S.C. 1821(j)], within the exclusive economic zone within the special areas[,], or for any anadromous species or Continental Shelf fishery resources beyond such zone or areas, unless such fishing is authorized by, and conducted in accordance with, a valid and applicable permit issued pursuant to section 【204(b) or (c) [16 U.S.C. 1824(b), (c)]】 201(b), (c), or (d); or

(C) except as permitted under section 306(c) [16 U.S.C. 1856(c)], in fish processing (as defined in paragraph (4)(A) of such section [16 U.S.C. 1856(c)(4)(A)]) within the internal waters of a State (as defined in paragraph (4)(B) of such section [16 U.S.C. 1856(c)(4)(B)]);

【(3) for any vessel of the United States, and for the owner or operator of any vessel of the United States, to transfer directly or indirectly, or attempt to so transfer, any United States harvested fish to any foreign fishing vessel, while such foreign vessel is within the exclusive economic zone or special areas, unless the foreign fishing vessel has been issued a permit under section 204 [16 U.S.C. 1824] which authorizes the receipt by such vessel of United States harvested fish of the species concerned;】

(3) for any vessel of the United States, and for the owner or operator of any vessel of the United States, to transfer at sea directly or indirectly, or attempt to so transfer at sea, any United States harvested fish to any foreign fishing vessel, while such foreign vessel is within the exclusive economic zone or within the boundaries of any State except to the extent that the foreign fishing vessel has been permitted under section 204(b)(6)(B) or section 306(c) to receive such fish;

(4) for any fishing vessel other than a vessel of the United States to operate, and for the owner or operator of a fishing vessel other than a vessel of the United States to operate such vessel, in the exclusive economic zone or within the boundaries of any State or special areas, if—

(A) all fishing gear on the vessel is not stored below deck or in an area where it is not normally used, and not readily available, for fishing; or

(B) all fishing gear on the vessel which is not so stored is not secured and covered so as to render it unusable for fishing;

unless such vessel is authorized to engage in fishing in the area in which the vessel is operating; and

(5) for any vessel of the United States, and for the owner or operator of any vessel of the United States, to engage in fishing in the waters of a foreign nation in a manner that violates an international fishery agreement between that nation and the United States that has been subject to Congressional oversight in the manner described in section 203 [16 U.S.C. 1823], or any regulations issued to implement such an agreement; except that the binding provisions of such agreement and implementing regulations shall have been published in the Federal Register prior to such violation.

§ 1858. Civil penalties and permit sanctions

(a) **ASSESSMENT OF PENALTY.**—Any person who is found by the Secretary, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act prohibited by section 307 [16 U.S.C. 1857] shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed \$ 100,000 for each violation. Each day of a continuing violation shall constitute a separate offense. The amount of such civil penalty shall be assessed by the Secretary, or his designee, by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, [ability to pay,] and such other matters as justice may require.

(b) **REVIEW OF CIVIL PENALTY.**—[Any person against whom a civil penalty is assessed under subsection (a) may obtain review thereof in the United States district court for the appropriate district by filing a complaint in such court within 30 days from the date of such order and by simultaneously serving a copy of such complaint by certified mail on the Secretary, the Attorney General and the appropriate United States Attorney.] *Any person against whom a civil penalty is assessed under subsection (a) or against whom a permit sanction is imposed under subsection (g) (other than a permit suspension for nonpayment of penalty or fine) may obtain review thereof in the United States district court for the appropriate district by filing a complaint against the Secretary in such court within 30 days from the date of such order.* The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed, as provided in section 2112 of title 28, United States Code. The findings and order of the Secretary shall be set aside by such court if they are not found to be supported by substantial evidence, as provided in section 706(2) of title 5, United States Code.

(c) **ACTION UPON FAILURE TO PAY ASSESSMENT.**—If any person fails to pay an assessment of a civil penalty after it has become a

final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General of the United States, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(d) IN REM JURISDICTION.—A fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used in the commission of an act prohibited by section 307 [16 U.S.C. 1857] shall be liable in rem for any civil penalty assessed for such violation under section 308 [this section] and may be proceeded against in any district court of the United States having jurisdiction thereof. Such penalty shall constitute a maritime lien on such vessel which may be recovered in an action in rem in the district court of the United States having jurisdiction over the vessel.

(e) COMPROMISE OR OTHER ACTION BY SECRETARY.—The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section.

(f) SUBPENAS.—For the purposes of conducting any hearing under this section, the Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contempt or refusal to obey a subpoena served upon any person pursuant to this subsection, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(g) PERMIT SANCTIONS.—

(1) In any case in which (A) a vessel has been used in the commission of an act prohibited under section 307 [16 U.S.C. 1857], (B) the owner or operator of a vessel or any other person who has been issued or has applied for a permit under this Act has acted in violation of section 307 [16 U.S.C. 1857], or [(C) any civil penalty or criminal fine imposed on a vessel or owner or operator of a vessel or any other person who has been issued or has applied for a permit under any fishery resource law statute enforced by the Secretary has not been paid and is overdue,] (C) *any amount in settlement of a civil forfeiture imposed on a vessel or other property, or any civil penalty or criminal fine imposed on a vessel or owner or operator of a vessel or any other person who has been issued or has applied for a permit under any marine resource law enforced by the Secretary, has not been paid and is overdue*, the Secretary may—

(i) revoke any permit issued with respect to such vessel or person, with or without prejudice to the issuance of subsequent permits;

- (ii) suspend such permit for a period of time considered by the Secretary to be appropriate;
 - (iii) deny such permit; or
 - (iv) impose additional conditions and restrictions on any permit issued to or applied for by such vessel or person under this Act and, with respect to foreign fishing vessels, on the approved application of the foreign nation involved and on any permit issued under that application.
- (2) In imposing a sanction under this subsection, the Secretary shall take into account—
- (A) the nature, circumstances, extent, and gravity of the prohibited acts for which the sanction is imposed; and
 - (B) with respect to the violator, the degree of culpability, any history of prior offenses, and such other matters as justice may require.
- (3) Transfer of ownership of a vessel, by sale or otherwise, shall not extinguish any permit sanction that is in effect or is pending at the time of transfer of ownership. Before executing the transfer of ownership of a vessel, by sale or otherwise, the owner shall disclose in writing to the prospective transferee the existence of any permit sanction that will be in effect or pending with respect to the vessel at the time of the transfer.
- (4) In the case of any permit that is suspended under this subsection for nonpayment of a civil penalty or criminal fine, the Secretary shall reinstate the permit upon payment of the penalty or fine and interest thereon at the prevailing rate.
- (5) No sanctions shall be imposed under this subsection unless there has been a prior opportunity for a hearing on the facts underlying the violation for which the sanction is imposed, either in conjunction with a civil penalty proceeding under this section or otherwise.

§ 1860. Civil forfeitures

(a) IN GENERAL.—Any fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used, and any fish (or the fair market value thereof) taken or retained, in any manner, in connection with or as a result of the commission of any act prohibited by section 307 [16 U.S.C. 1857] (other than any act for which the issuance of a citation under section 311(c) [16 U.S.C. 1861(c)] is sufficient sanction) shall be subject to forfeiture to the United States. All or part of such vessel may, and all such fish (or the fair market value thereof) shall, be forfeited to the United States pursuant to a civil proceeding under this section.

(b) JURISDICTION OF DISTRICT COURTS.—Any district court of the United States which has jurisdiction under section 311(d) [16 U.S.C. 1861(d)] shall have jurisdiction, upon application by the Attorney General on behalf of the United States, to order any forfeiture authorized under subsection (a) and any action provided for under subsection (d).

(c) JUDGMENT.—If a judgment is entered for the United States in a civil forfeiture proceeding under this section, the Attorney General may seize any property or other interest declared forfeited to the United States, which has not previously been seized pursuant to this Act or for which security has not previously been obtained

under subsection (d). The provisions of the customs laws relating to—

(1) the seizure, forfeiture, and condemnation of property for violation of the customs law;

(2) the disposition of such property or the proceeds from the sale thereof; and

(3) the remission or mitigation of any such forfeiture;

shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this Act, unless such provisions are inconsistent with the purposes, policy, and provisions of this Act. The duties and powers imposed upon the Commissioner of Customs or other persons under such provisions shall, with respect to this Act, be performed by officers or other persons designated for such purpose by the Secretary.

(d) PROCEDURE.—

(1) Any officer authorized to serve any process in rem which is issued by a court having jurisdiction under section 311(d) [16 U.S.C. 1861(d)] shall—

(A) stay the execution of such process; or

(B) discharge any fish seized pursuant to such process; upon the receipt of a satisfactory bond or other security from any person claiming such property. Such bond or other security shall be conditioned upon such person (i) delivering such property to the appropriate court upon order thereof, without any impairment of its value, or (ii) paying the monetary value of such property pursuant to an order of such court. Judgment shall be recoverable on such bond or other security against both the principal and any sureties in the event that any condition thereof is breached, as determined by such court. Nothing in this paragraph may be construed to require the Secretary, except in the Secretary's discretion or pursuant to the order of a court under section 311(d) [16 U.S.C. 1861(d)], to release on bond any seized fish or other property or the proceeds from the sale thereof.

(2) Any fish seized pursuant to this Act may be sold, subject to the approval and direction of the appropriate court, for not less than the fair market value thereof. The proceeds of any such sale shall be deposited with such court pending the disposition of the matter involved.

(e) REBUTTABLE PRESUMPTION.—

(1) For purposes of this section, it shall be a rebuttable presumption that all fish found on board a fishing vessel which is seized in connection with an act prohibited by section 307 [16 U.S.C. 1857] were taken or retained in violation of this Act.

(2) For purposes of this Act, it shall be a rebuttable presumption that any fish of a species which spawns in fresh or estuarine waters and migrates to ocean waters that is found on board a vessel is of United States origin if the vessel is within the migratory range of the species during that part of the year to which the migratory range applies.

(3) *For purposes of this Act, it shall be a rebuttable presumption that any vessel that is shoreward of the outer boundary of the exclusive economic zone of the United States or beyond the exclusive economic zone of any nation, and that has gear on*

board that is capable of use for large-scale driftnet fishing, is engaged in such fishing.

§ 1861. Enforcement

(a) **RESPONSIBILITY.**—The provisions of this Act shall be enforced by the Secretary and the Secretary of the department in which the Coast Guard is operating. Such Secretaries may, by agreement, on a reimbursable basis or otherwise, utilize the personnel, services, equipment (including aircraft and vessels), and facilities of any other Federal agency, including all elements of the Department of Defense, and of any State agency, in the performance of such duties.

(b) **POWERS OF AUTHORIZED OFFICERS.**—

(1) Any officer who is authorized (by the Secretary, the Secretary of the department in which the Coast Guard is operating, or the head of any Federal or State agency which has entered into an agreement with such Secretaries under subsection (a)) to enforce the provisions of this Act may—

(A) with or without a warrant or other process—

(i) arrest any person, if he has reasonable cause to believe that such person has committed an act prohibited by section 307 [16 U.S.C. 1857];

(ii) board, and search or inspect, any fishing vessel which is subject to the provisions of this Act;

(iii) seize any fishing vessel (together with its fishing gear, furniture, appurtenances, stores, and cargo) used or employed in, or with respect to which it reasonably appears that such vessel was used or employed in, the violation of any provision of this Act;

(iv) seize any fish (wherever found) taken or retained in violation of any provision of this Act; and

(v) seize any other evidence related to any violation of any provision of this Act;

(B) execute any warrant or other process issued by any court of competent jurisdiction; and

(C) exercise any other lawful authority.

(2) Subject to the direction of the Secretary, a person charged with law enforcement responsibilities by the Secretary who is performing a duty related to enforcement of a law regarding fisheries or other marine resources may make an arrest without a warrant for an offense against the United States committed in his presence, or for a felony cognizable under the laws of the United States, if he has reasonable grounds to believe that the person to be arrested has committed or is committing a felony. The arrest authority described in the preceding sentence may be conferred upon an officer or employee of a State agency, subject to such conditions and restrictions as are set forth by agreement between the State agency, the Secretary, and, with respect to enforcement operations within the exclusive economic zone and special areas, Secretary of the department in which the Coast Guard is operating.

(c) **ISSUANCE OF CITATIONS.**—If any officer authorized to enforce the provisions of this Act (as provided for in this section) finds that a fishing vessel is operating or has been operated in violation of any provision of this Act, such officer may, in accordance with reg-

ulations issued jointly by the Secretary and the Secretary of the department in which the Coast Guard is operating, issue a citation to the owner or operator of such vessel in lieu of proceeding under subsection (b). If a permit has been issued pursuant to this Act for such vessel, such officer shall note the issuance of any citation under this subsection, including the date thereof and the reason therefor, on the permit. The Secretary shall maintain a record of all citations issued pursuant to this subsection.

(d) JURISDICTION OF COURTS.—The district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under the provisions of this Act. In the case of **Guam, and any Commonwealth, territory, or** *Guam or any possession of the United States in the Pacific Ocean*, the appropriate court is the United States District Court for the District of Guam, except that in the case of American Samoa, the appropriate court is the United States District Court for the District of **Hawaii.** *Hawaii, and except that in the case of the Northern Mariana Islands, the appropriate court is the United States District Court for the District of the Northern Mariana Islands. Any such court may, at any time—*

- (1) enter restraining orders or prohibitions;
- (2) issue warrants, process in rem, or other process;
- (3) prescribe and accept satisfactory bonds or other security;
- and
- (4) take such other actions as are in the interest of justice.

(e) PAYMENT OF STORAGE, CARE, AND OTHER COSTS.—

(1) Notwithstanding any other provision of law, the Secretary or the Secretary of the Treasury may pay from sums received as fines, penalties, and forfeitures of property for violations of any provisions of this Act or of any other **fishery** *marine* resource law enforced by the Secretary, including the Lacey Act Amendments of 1981 (16 U.S.C. 3371 et seq.)—

(A) the reasonable and necessary costs incurred in providing temporary storage, care, and maintenance of seized fish or other property pending disposition of any civil or criminal proceeding alleging a violation of any provision of this Act or any other **fishery** *marine* resource law enforced by the Secretary with respect to that fish or other property;

(B) a reward of *not less than 20 percent of the penalty collected* to any person who furnishes information which leads to an arrest, conviction, civil penalty assessment, or forfeiture of property for any violation of any provision of this Act or any other **fishery** *marine* resource law enforced by the Secretary;

(C) any expenses directly related to investigations and civil or criminal enforcement proceedings, including any necessary expenses for equipment, training, travel, witnesses, and contracting services directly related to such investigations or proceedings;

(D) any valid liens or mortgages against any property that has been forfeited;

(E) claims of parties in interest to property disposed of under section 612(b) of the Tariff Act of 1930 (19 U.S.C.

1612(b)) or under other provisions of the customs laws, as made applicable by section 310(c) of this Act [16 U.S.C. 1860(c)] to seizures made by the Secretary under this Act, in amounts determined by the Secretary to be applicable to such claims at the time of seizure; and】

(E) claims of parties in interest to property disposed of under section 612(b) of the Tariff Act of 1930 (19 U.S.C. 1612(b)), as made applicable by section 310(c) of this Act or by any other marine resource law enforced by the Secretary, to seizures made by the Secretary, in amounts determined by the Secretary to be applicable to such claims at the time of seizure; and

(F) reimbursement to any Federal or State agency, including the Coast Guard, for services performed, or personnel, equipment, or facilities utilized, under any agreement with the Secretary entered into pursuant to subsection (a), or any similar agreement authorized by law.

【(2) Any person assessed a civil penalty for, or convicted of, any violation of this Act shall be liable for the cost incurred in storage, care, and maintenance of any fish or other property seized in connection with the violation.】

(2) Any person found in an administrative or judicial proceeding to have violated this Act or any other marine resource law enforced by the Secretary shall be liable for the cost incurred in the sale, storage, care, and maintenance of any fish or other property lawfully seized in connection with the violation.

(f) ENFORCEMENT OF NORTHEAST MULTISPECIES FISHERY MANAGEMENT PLAN.—

(1) ENFORCEMENT AGREEMENTS.—Beginning not later than October 1, 1993, the Secretary shall, if requested by the Governor of a State represented on the New England Fishery Management Council, enter into an agreement under subsection (a), with each of the States represented on such Council, that authorizes the marine law enforcement agency of such State to perform duties of the Secretary relating to enforcement of the Northeast Multispecies Fishery Management Plan.

(2) REIMBURSEMENT.—An agreement with a State under this subsection shall provide, subject to the availability of appropriations, for reimbursement of the State for expenses incurred in detection and prosecution of violations of any fishery management plan approved by the Secretary.

(3) COAST GUARD ENFORCEMENT WORKING GROUP.—

(A) ESTABLISHMENT.—The Commander of the First Coast Guard District shall establish an informal fisheries enforcement working group to improve the overall compliance with and effectiveness of the regulations issued under the Northeast Multispecies Fishery Management Plan.

(B) MEMBERSHIP.—The working group shall consist of members selected by the Commander, and shall include—

(i) individuals who are representatives of various fishing ports located in the States represented on the New England Fishery Management Council;

(ii) captains of fishing vessels that operate in waters under the jurisdiction of that Council; and

(iii) other individuals the Commander considers appropriate.

(C) NON-FEDERAL STATUS OF WORKING GROUP MEMBERS.—An individual shall not receive any compensation for, and shall not be considered to be a Federal employee based on, membership in the working group.

(D) MEETINGS.—The working group shall meet, at the call of the Commander, at least 4 times each year. The meetings shall be held at various major fishing ports in States represented on the New England Fishery Management Council, as specified by the Commander.

(4) USE OF FINES AND PENALTIES.—Amounts available to the Secretary under this Act which are attributable to fines and penalties imposed for violations of the Northeast Multispecies Fishery Management Plan shall be used by the Secretary pursuant to this section to enforce that Plan.

(g) ENFORCEMENT IN THE PACIFIC INSULAR AREAS.—*The Secretary, in consultation with the Governors of the Pacific Insular Areas and the Western Pacific Regional Fishery Management Council, shall to the extent practicable support cooperative enforcement agreements between Federal and Pacific Insular Area authorities.*

(h) ANNUAL REPORT ON ENFORCEMENT.—*Each year at the time the President's budget is submitted to the Congress, the Secretary and the Secretary of the Department in which the Coast Guard is operating shall, after consultation with the Councils, submit a report on the effectiveness of the enforcement of fishery management plans and regulations to implement such plans under the jurisdiction of each Council, including—*

(1) an analysis of the adequacy of Federal personnel and funding resources related to the enforcement of fishery management plans and regulations to implement such plans; and

(2) recommendations to improve enforcement that should be considered in developing plan amendments or regulations implementing such plans.

[(g)] (i) DEFINITIONS.—For purposes of this section—

(1) The term “provisions of this Act” includes (A) any regulation or permit issued pursuant to this Act, and (B) any provision of, or regulation issued pursuant to, any international fishery agreement under which foreign fishing is authorized by section [201(b), (c) [16 U.S.C. 1821(b), (c)],] 201 (b) or (c), or section 204(d), with respect to fishing subject to the exclusive fishery management authority of the United States.

(2) The term “violation of any provision of this Act” includes (A) the commission of any act prohibited by section 307 [16 U.S.C. 1857], and (B) the violation of any regulation, permit, or agreement referred to in paragraph (1).

§ 1862. North Pacific fisheries [research plan] conservation

(a) IN GENERAL.—The North Pacific Fishery Management Council may prepare, in consultation with the Secretary, a fisheries research plan for all fisheries under the Council's jurisdiction except salmon fisheries which—

(1) requires that observers be stationed on fishing vessels engaged in the catching, taking, or harvesting of fish and on United States fish processors fishing for or processing species under the jurisdiction of the Council, including the Northern Pacific halibut fishery, for the purpose of collecting data necessary for the conservation, management, and scientific understanding of any fisheries under the Council's jurisdiction; and

(2) establishes a system of fees to pay for the costs of implementing the plan.

(b) STANDARDS.—

(1) Any plan or plan amendment prepared under this section shall be reasonably calculated to—

(A) gather reliable data, by stationing observers on all or a statistically reliable sample of the fishing vessels and United States fish processors included in the plan, necessary for the conservation, management, and scientific understanding of the fisheries covered by the plan;

(B) be fair and equitable to all vessels and processors;

(C) be consistent with applicable provisions of law; and

(D) take into consideration the operating requirements of the fisheries and the safety of observers and fishermen.

(2) Any system of fees established under this section shall—

(A) provide that the total amount of fees collected under this section not exceed the combined cost of (i) stationing observers on board fishing vessels and United States fish processors, (ii) the actual cost of inputting collected data, and (iii) assessments necessary for a risk-sharing pool implemented under subsection (e) of this section, less any amount received for such purpose from another source or from an existing surplus in the North Pacific Fishery Observer Fund established in subsection (d) of this section;

(B) be fair and equitable to all participants in the fisheries under the jurisdiction of the Council, including the Northern Pacific halibut fishery;

(C) provide that fees collected not be used to pay any costs of administrative overhead or other costs not directly incurred in carrying out the plan;

(D) not be used to offset amounts authorized under other provisions of law;

(E) be expressed as a percentage, not to exceed 2 percent, of the unprocessed ex-vessel value of fish and shellfish harvested under the jurisdiction of the Council, including the Northern Pacific halibut fishery;

(F) be assessed against all fishing vessels and United States fish processors, including those not required to carry an observer under the plan, participating in fisheries under the jurisdiction of the Council, including the Northern Pacific halibut fishery;

(G) provide that fees collected will be deposited in the North Pacific Fishery Observer Fund established under subsection (d) of this section;

(H) provide that fees collected will only be used for implementing the plan established under this section; and

(I) meet the requirements of section 9701(b) of title 31, United States Code.

(c) ACTION BY SECRETARY.—

(1) Within 60 days after receiving a plan or plan amendment from the North Pacific Council under this section, the Secretary shall review such plan or plan amendment and either (A) remand such plan or plan amendment to the Council with comments if it does not meet the requirements of this section, or (B) publish in the Federal Register proposed regulations for implementing such plan or plan amendment.

(2) During the 60-day public comment period, the Secretary shall conduct a public hearing in each State represented on the Council for the purpose of receiving public comments on the proposed regulations.

(3) Within 45 days of the close of the public comment period, the Secretary, in consultation with the Council, shall analyze the public comment received and publish final regulations for implementing such plan.

(4) If the Secretary remands a plan or plan amendment to the Council for failure to meet the requirements of this section, the Council may resubmit such plan or plan amendment at any time after taking action the Council believes will address the defects identified by the Secretary. Any plan or plan amendment resubmitted to the Secretary will be treated as an original plan submitted to the Secretary under paragraph (1) of this subsection.

(d) FISHERY OBSERVER FUND.—There is established in the Treasury a North Pacific Fishery Observer Fund. The Fund shall be available, without appropriation or fiscal year limitation, only to the Secretary for the purpose of carrying out the provisions of this section, subject to the restrictions in subsection (b)(2) of this section. The Fund shall consist of all monies deposited into it in accordance with this section. Sums in the Fund that are not currently needed for the purposes of this section shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

(e) SPECIAL PROVISIONS REGARDING OBSERVERS.—

(1) The Secretary shall review—

(A) the feasibility of establishing a risk sharing pool through a reasonable fee, subject to the limitations of subsection (b)(2)(E) of this section, to provide coverage for vessels and owners against liability from civil suits by observers, and

(B) the availability of comprehensive commercial insurance for vessel and owner liability against civil suits by observers.

(2) If the Secretary determines that a risk sharing pool is feasible, the Secretary shall establish such a pool, subject to the provisions of subsection (b)(2) of this section, unless the Secretary determines that—

(A) comprehensive commercial insurance is available for all fishing vessels and United States fish processors required to have observers under the provisions of this section, and

(B) such comprehensive commercial insurance will provide a greater measure of coverage at a lower cost to each participant.

(f) *BYCATCH REDUCTION.*—*In implementing section 303(a)(11) and this section, the North Pacific Council shall recommend conservation and management measures to lower, on an annual basis for a period of not less than four years, the total amount of economic discards occurring in the fisheries under its jurisdiction.*

(g) *BYCATCH REDUCTION INCENTIVES.*—(1) *Notwithstanding section 304(d), the North Pacific Council may recommend, and the Secretary may approve, consistent with the provisions of this Act, a system of fees in a fishery to provide incentives to reduce bycatch and bycatch rates; except that such fees shall not exceed one percent of the estimated annual ex-vessel value of the target species in the fishery. Any fees collected shall be deposited in the North Pacific Fishery Observer Fund, and may be made available by the Secretary to offset costs related to the reduction of bycatch in the fishery from which such fees were derived, including conservation and management measures and research, and to the State of Alaska to offset costs incurred by the State in the fishery from which such fees were derived and in which the State is directly involved in management or enforcement.*

(2)(A) *Notwithstanding section 303(d), and in addition to the authority provided in section 303(b)(10), the North Pacific Council may recommend, and the Secretary may approve, conservation and management measures which provide allocations of regulatory discards to individual fishing vessels as an incentive to reduce per vessel bycatch and bycatch rates in a fishery, provided that—*

(i) such allocations may not be transferred for monetary consideration and are made only on an annual basis; and

(ii) any such conservation and management measures will meet the requirements of subsection (f) and (h) and will result in an actual reduction in regulatory discards in the fishery.

(B) *The North Pacific Council may recommend restrictions in addition to the restriction imposed by clause (i) of subparagraph (A) on the transferability of any such allocations, and the Secretary may approve such recommendation.*

(h) *CATCH MEASUREMENT.*—(1) *By June 1, 1997, the North Pacific Council shall recommend, and the Secretary may approve, consistent with the other provisions of this Act, conservation and management measures to ensure total catch measurement in each fishery under its jurisdiction. Such measures shall ensure the accurate enumeration, at a minimum, of target species, economic discards, and regulatory discards.*

(2) *To the extent the measures submitted under paragraph (1) do not require United States fish processors and fish processing vessels (as defined in chapter 21 of title 46, United States Code) to weigh fish, the North Pacific Council and Secretary shall submit a plan to the Congress by January 1, 1998, to allow for weighing, including recommendations to assist such processors and processing vessels in acquiring necessary equipment, unless the Council determines that such weighing is not necessary to meet the requirements of this subsection.*

(i) *FULL RETENTION AND UTILIZATION.*—(1) *The North Pacific Council shall submit to the Secretary by June 1, 1999, a report on the advisability of requiring the full retention by fishing vessels and full utilization by United States fish processors of economic discards in fisheries under its jurisdiction if such economic discards, or the mortality of such economic discards, cannot be avoided. The report shall address the projected impacts of such requirements on participants in the fishery.*

(2) *The report shall address the advisability of measures to minimize processing waste, including standards setting minimum percentages which must be processed for human consumption. For the purpose of the report, "processing waste" means that portion of any fish which is processed and which could be used for human consumption or other commercial use, but which is not so used.*

§ 1863. Northwest Atlantic Ocean Fisheries Reinvestment Program

(a) PROGRAM.—

(1) Not later than October 1, 1993, the Secretary shall establish a Northwest Atlantic Ocean Fisheries Reinvestment Program for the purposes of—

(A) promoting development of commercial fisheries and markets for underutilized species of the northwest Atlantic Ocean;

(B) developing alternative fishing opportunities for participants in the New England groundfish fishery;

(C) providing technical support and assistance to United States fishermen and fish processors to improve the value-added processing of underutilized species and to make participation in fisheries for underutilized species of the northwest Atlantic Ocean economically viable;

(D) creating new economic opportunities through the improved processing and expanded use of fish waste; and

(E) helping to restore overfished New England groundfish stocks through aquaculture or hatchery programs.

(2) CONSULTATION.—In establishing and implementing the Northwest Fisheries Reinvestment Program, the Secretary shall consult with representatives of the commercial fishing industry, the seafood processing industry, and the academic community (including the National Sea Grant Program).

(3) ACTIVITIES UNDER PROGRAM.—Subject to the availability of appropriations, the Secretary shall award contracts, grants and other financial assistance to United States citizens to carry out the purposes of subsection (1), under the terms and conditions provided in section 2(c) of the Act of August 11, 1939 (15 U.S.C. 713c–3(c); commonly referred to as the "Saltonstall-Kennedy Act"), except that, in making awards under this section for projects involving participation in fisheries for underutilized species, the Secretary shall give the highest priority to a person who owns or operates a fishing vessel permitted under this Act to participate in the New England groundfish fishery who agrees to surrender that permit to the Secretary during the duration of the contract, grant or other assistance.

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated \$5,000,000 for each of fiscal years 1993

through [1997] 2000 to carry out the purposes of this section. For fiscal year 1993 no more than \$1,000,000, and for fiscal year 1994 no more than \$2,000,000, of such funds may be provided from monies made available under section 2(b) of the Act of August 11, 1939 (15 U.S.C. 713c-3(b)).

(b) ASSISTANCE OF OTHER AGENCIES.—The Secretary shall actively seek the assistance of other Federal agencies in the development of fisheries for underutilized species of the northwest Atlantic Ocean, including, to the extent permitted by other applicable laws, assistance from the Secretary of Agriculture in including such underutilized species as agricultural commodities in the programs of the Foreign Agricultural Service for which amounts are authorized under the Food, Agriculture, Conservation, and Trade Act of 1990 (Public Law 101-624; 104 Stat. 3359).

(c) MANAGEMENT PLANS FOR UNDERUTILIZED SPECIES.—The New England Fishery Management Council, in consultation with other appropriate Councils, shall develop fishery management plans as soon as possible for any underutilized species of the northwest Atlantic Ocean that is not covered under such a plan, in order to prevent overfishing of that species.

(d) UNDERUTILIZED SPECIES DEFINED.—For purposes of this section, the term “underutilized species of the northwest Atlantic Ocean” means any fish species of the northwest Atlantic Ocean that is identified, by the Director of the Northeast Fisheries Center of the National Marine Fisheries Service, as an underutilized species.

SEC. 315 [16 U.S.C. ???]. FISHING CAPACITY REDUCTION PROGRAMS.

(a) IN GENERAL.—(1) *The Secretary, with the approval of the appropriate Council, may conduct a fishing capacity reduction program (referred to in this section as the “program”) in a fishery if the Secretary determines that—*

(A) the program is necessary to prevent or end overfishing, rebuild stocks of fish, or adequate to achieve measurable and significant improvements in the conservation and management of the fishery;

(B) the fishery management plan implemented for the fishery—

(i) is consistent with the program objective;

(ii) will prevent the replacement of fishing capacity removed by the program through a moratorium on new entrants, restrictions on vessel upgrades, and other effort control measures and accounting for the full potential capacity of the fleet; and

(iii) establishes a specified or target total allowable catch that triggers closure of the fishery or proportional adjustments to reduce catch; and

(C) the program is cost-effective and capable of repaying any debt obligation incurred under section 1112 of Title XI of the Merchant Marine Act, 1936 (46 U.S.C. 1271 et seq.).

(2) *The objective of the program shall be to obtain the maximum sustained reduction in fishing capacity at the least cost and in a minimum period of time. To achieve that objective, the Secretary is authorized to pay the owners of—*

(A) permits authorizing participation in the fishery, Provided that such permits are surrendered for permanent revocation; or
 (B) fishing vessels, Provided that any such vessel is—

- (i) scrapped; or
- (ii) through the Secretary of the department in which the Coast Guard is operating, subjected to title restrictions that permanently prohibit and effectively prevent its use in fishing.

(3) Participation in the program shall be voluntary, but the Secretary shall ensure compliance by all who do participate.

(4) The Secretary shall consult with the appropriate Council, other Federal agencies, appropriate regional authorities, affected States and fishing communities, participants in the fishery, conservation organizations, and other interested parties throughout the development and implementation of any program.

(b) PROGRAM FUNDING.—(1) The program may be funded by any combination of amounts—

(A) available under clause (iv) of section 2(b)(1)(A) of the Act of August 11, 1939 (15 U.S.A. 713c-3(b)(1)(A); Saltonstall-Kennedy Act);

(B) appropriated for fisheries disaster relief under section 316 of this Act or section 308 of the Interjurisdictional Fisheries Act (16 U.S.C. 4107);

(C) provided by an industry fee system under this section and in accordance with section 1112 of title XI of the Merchant Marine Act, 1936; and

(D) provided from any State or other public sources and private or non-profit organizations.

(2) All funds for the program, including any fees established under subsection (c), shall be paid into the fishing capacity reduction fund established under section 1112 of title XI of the Merchant Marine Act, 1936.

(c) INDUSTRY FEE SYSTEM.—(1)(A) If an industry fee system is necessary to fund the program, the Secretary, with the approval of the appropriate Council, may conduct a referendum on such system. Prior to the referendum, the Secretary, in consultation with the Council, shall—

(i) identify, to the extent practicable, and notify all permit or vessel owners who would be affected by the program and who meet eligibility requirements for participation in the referendum; and

(ii) make available to such owners information about the industry fee system describing the schedule and procedures for the referendum, the proposed program, and the amount and duration and any other terms and conditions of the fee system.

(B) The industry fee system shall be considered approved if the referendum votes which are cast in favor of the proposed system constitute a two-thirds majority of the participants voting.

(2) Notwithstanding section 304(d) and consistent with an approved industry fee system, the Secretary is authorized to establish such a system to fund the program and repay debt obligations incurred pursuant to section 1112 of title XI of the Merchant Marine Act, 1936. The fees for a program under this section shall—

(A) be established by the Secretary and adjusted from time to time as the Secretary determines necessary to ensure the availability of sufficient funds to repay such debt obligations;

(B) not exceed 5 percent of the gross sale proceeds of all fish landed from the fishery for which the program is established;

(C) be deducted by the first ex-vessel fish purchaser from the gross fish sales proceeds otherwise payable to the seller and accounted for and forwarded by such fish purchasers to the Secretary in such manner as the Secretary may establish; and

(D) be in effect only until such time as the debt obligation has been fully paid.

(d) **IMPLEMENTATION PLAN.**—(1) The Secretary, in consultation with the appropriate Council and other interested parties, shall prepare and publish in the Federal Register for a 60-day public comment period, an implementation plan for each program. The implementation plan shall—

(A) define criteria for determining types and numbers of vessels which are eligible for participation in the program taking into account characteristics of the fishery, the requirements of applicable fishery management plans, the needs of fishing communities, any strategy developed under section 316, and the need to minimize program costs; and

(B) establish procedures for program participation (such as submission of owner bid under an auction system or fair market-value assessment) including any terms and conditions for participation which the Secretary deems to be reasonably necessary to meet the goals of the program;

(2) During the 60-day public comment period—

(A) the Secretary shall conduct a public hearing in each State affected by the program; and

(B) the appropriate Council shall submit its comments and recommendations, if any, regarding the plan and regulations.

(3) Within 45 days after the close of the public comment period, the Secretary, in consultation with the appropriate Council, shall analyze the public comment received and publish in the Federal Register a final implementation plan for the program and regulations for its implementation. The Secretary may not adopt a final implementation plan involving industry fees or debt obligation unless an industry fee system has been approved by a referendum under this section.

SEC. 316 [16 U.S.C. ???]. TRANSITION TO SUSTAINABLE FISHERIES.

(a) **SUSTAINABLE DEVELOPMENT STRATEGY.**—(1) At the discretion of the Secretary or at the request of the Governor of an affected State or a fishing community, the Secretary, in consultation with the Councils and Federal agencies, as appropriate, may work with regional authorities, affected States, fishing communities, the fishing industry, conservation organizations, and other interested parties, to develop a sustainable development strategy for any fishery identified as overfished under section 304(d) or determined to be a commercial fishery failure under this section or any other Federal fishery for which a fishery management plan is being developed or amended under section 303.

(2) Such sustainable development strategy shall—

(A) develop a balanced and comprehensive long-term plan to guide the transition to a sustainable fishery and the development of fishery management plan under section 303 or a fishery rebuilding effort under section 304(d) which—

(i) takes into consideration the economic, social, and environmental factors affecting the fishery;

(ii) identifies alternative economic opportunities; and

(iii) establishes long-term objectives for the fishery including vessel types and sizes, harvesting and processing capacity, and optimal fleet size;

(B) identify Federal and State programs which can be used to provide assistance to fishing communities during development and implementation of a fishery recovery effort; and

(C) establish procedures to implement such a plan and facilitate consensus and coordination in regional decision-making;

(3) The Secretary shall complete and submit to the Congress a report on any sustainable development strategy developed under this section within 6 months after it is developed and annually thereafter.

(b) *FISHERIES DISASTER RELIEF.*—(1) At the discretion of the Secretary or at the request of the Governor of an affected State or a fishery community, the Secretary shall determine whether there is a commercial fishery failure due to a fishery resource disaster as a result of—

(A) natural causes;

(B) man-made causes beyond the control of fishery managers to mitigate through conservation and management measures; or

(C) undetermined causes.

(2) Upon the determination under paragraph (1) that there is a commercial fishery failure, the Secretary is authorized to make sums available to be used by the affected State, fishing community, or by the Secretary in cooperation with the affected State or fishing community for assessing the economic and social effects of the commercial fishery failure, or any activity that the Secretary determines is appropriate to restore the fishery or prevent a similar failure in the future and to assist a fishing community affected by such failure. Before making funds available for an activity authorized under this section, the Secretary shall make a determination that such activity will not expand the size or scope of the commercial fishery failure into other fisheries or other geographic regions.

(3) The Federal share of the cost of any activity carried out under the authority of this section shall not exceed 75 percent of the cost of that activity.

(4) There are authorized to be appropriated to the Secretary such sums as are necessary for each of the fiscal years 1995, 1996, 1997, 1998, 1999, and 2000.

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“Sec. 315. Transition to sustainable fisheries

“Sec. 316. Fisheries disaster relief

“TITLE IV—FISHERY MONITORING AND RESEARCH

“Sec. 401. Registration and data management

“Sec. 402. Data collection

“Sec. 403. Observers

“Sec. 404. Fisheries research

"Sec. 405. Incidental harvest research

"Sec. 406. Fisheries ecosystem management research

"Sec. 407. Gulf of Mexico red snapper research

TITLE IV—FISHERY MONITORING AND RESEARCH

SEC. 401. [16 U.S.C. ???] REGISTRATION AND DATA MANAGEMENT.

(a) **STANDARDIZED FISHING VESSEL REGISTRATION AND DATA MANAGEMENT SYSTEM.**—*The Secretary shall, in cooperation with the Secretary of the department in which the Coast Guard is operating, the States, the Councils, and Marine Fisheries Commissions, develop recommendations for implementation of a standardized fishing vessel registration and data management system on a regional basis. The proposed system shall be developed after consultation with interested governmental and nongovernmental parties and shall—*

(1) be designed to standardize the requirements of vessel registration and data collection systems required by this Act, the Marine Mammal Protection Act (16 U.S.C. 1361 et seq.), and any other marine resource law implemented by the Secretary, and, with the permission of a State, any marine resource law implemented by such State;

(2) integrate programs under existing fishery management plans into a nonduplicative data collection and management system;

(3) avoid duplication of existing state, tribal, or federal systems (other than a federal system under paragraph (1)) and utilize, to the maximum extent practicable, information collected from existing systems;

(4) provide for implementation through cooperative agreements with, appropriate State, regional, or tribal entities and Marine Fisheries Commissions;

(5) provide for authorization of funding (subject to appropriations) to assist appropriate State, regional, or tribal entities and Marine Fisheries Commissions in implementation;

(6) establish standardized units of measurement, nomenclature, and formats for the collection and submission of information;

(7) minimize the paperwork required for vessels registered under the system;

(8) include all species of fish within the geographic areas of authority of the Councils and all fishing vessels including vessels carrying a passenger for hire engaged in recreational fishing, except for private recreational fishing vessels used exclusively for pleasure;

(9) require United States fish processors, and fish dealers and other first ex-vessel purchasers of fish that are subject to the proposed system to submit data (other than economic data) which may be necessary to meet the goals of the proposed system; and

(10) prescribe procedures necessary to ensure—

(A) the confidentiality of information collected under this section in accordance with section 402(b); and

(B) the timely release or availability to the public of complete and accurate information collected under this section.

(b) *FISHING VESSEL REGISTRATION.*—The registration system should, at a minimum, obtain the following information for each fishing vessel—

(1) the name and official number or other identification, together with the name and address of the owner or operator or both;

(2) gross tonnage, vessel capacity, type and quantity of fishing gear, mode of operation (catcher, catcher processor or other), and such other pertinent information with respect to vessel characteristics as the Secretary may require; and

(3) identification (by species, gear type, geographic area of operations, and season) of the fisheries in which the fishing vessel participates.

(c) *FISHERY INFORMATION.*—The data management system should, at a minimum, provide basic fisheries performance data for each fishery, including—

(1) the number of vessels participating in the fishery including vessels carrying a passenger for hire engaged in recreational fishing;

(2) the time period in which the fishery occurs;

(3) the approximate geographic location, or official reporting area where the fishery occurs;

(4) a description of fishing gear used in the fishery, including the amount and type of such gear and the appropriate unit of fishery effort; and

(5) other such data as required under subsection 303(a)(5).

(d) *DEFINITION.*—For the purposes of this section, the term “passenger for hire” shall have the same meaning as the definition for such term in section 2102(21a) of title 46, United States Code.

(e) *USE OF REGISTRATION.*—Any registration under this section shall not be considered a permit for the purposes of this Act, and the Secretary may not revoke, suspend, deny, or impose any other conditions or restrictions on any such registration or the use of such registration under this Act.

(f) *PUBLIC COMMENT.*—Within one year after the date of enactment of the Sustainable Fisheries Act, the Secretary shall publish in the Federal Register for a 60-day public comment period, a proposal that would provide for implementation of a standardized fishing vessel registration and data collection system that meets the requirements of subsections (a) through (c). The proposal shall include—

(1) a description of the arrangements for consultation and co-operation with the department in which the Coast Guard is operating, the States, the Councils, Marine Fisheries Commissions, the fishing industry and other interested parties; and

(2) any proposed regulations or legislation necessary to implement the proposal.

(g) *CONGRESSIONAL TRANSMITTAL.*—Within 60 days after the end of the comment period and after consideration of comments received under subsection (d), the Secretary shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives a proposal for implementation of a national fishing vessel registration system that includes—

- (1) any modifications made after comment and consultation;
- (2) a proposed implementation schedule; and
- (3) recommendations for any such additional legislation as the Secretary considers necessary or desirable to implement the proposed system.

(h) *REPORT TO CONGRESS.*—Within 15 months after the date of enactment of the Sustainable Fisheries Act, the Secretary shall report to Congress on the need to include private recreational fishing vessels used exclusively for pleasure into a national fishing vessel registration and data collection system. In preparing its report, the Secretary shall cooperate with the Secretary of the department in which the Coast Guard is operating, the States, the Councils, and Marine Fisheries Commissions, and consult with governmental and nongovernmental parties.

[SEC. 402. REPEALS.]

[(a) The Act of October 14, 1966 (16 U.S.C. 1091—1094), is repealed as of March 1, 1977.

[(b) The Act of May 20, 1964 (16 U.S.C. 1081—1086), is repealed as of March 1, 1977.]

SEC. 402. [16 U.S.C. ???] DATA COLLECTION.

(a) *COUNCIL REQUESTS.*—If a Council determines that additional information and data (other than information and data that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations) would be beneficial for developing, implementing, or revising a fishery management plan or for determining whether a fishery is in need of management, the Council may request that the Secretary implement a data collection program for the fishery which would provide the types of information and data (other than information and data that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations) specified by the Council. The Secretary shall approve such a data collection program if he determines that the need is justified, and shall promulgate regulations to implement the program within 60 days after such determination is made. If the Secretary determines that the need for a data collection program is not justified, the Secretary shall inform the Council of the reasons for such determination in writing. The determinations of the Secretary under this subsection regarding a Council request shall be made within a reasonable period of time after receipt of that request.

(b) *CONFIDENTIALITY OF INFORMATION.*—(1) Any information submitted to the Secretary by any person in compliance with any requirement under this Act shall be confidential and shall not be disclosed, except—

(A) to Federal employees and Council employees who are responsible for fishery management plan development and monitoring;

(B) to State or Marine Fisheries Commission employees pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business of any person;

(C) when required by court order;

(D) when such information is used to verify catch under an individual fishing quota system;

(E) unless the Secretary has obtained written authorization from the person submitting such information to release such information and such release does not violate other requirements of this subsection; or

(F) that observer data collected under the North Pacific Research Plan may be released as specified for weekly summary bycatch data identified by vessel, and haul-specific bycatch data without vessel identification.

Nothing in this paragraph prevents the use by the Secretary, or (with the approval of the Secretary) the Council, for conservation and management purposes information submitted in compliance with regulations promulgated under this Act, or the use, release, or publication of bycatch data pursuant to subparagraph (1)(F).

(2) The Secretary shall, by regulation, prescribe such procedures as may be necessary to preserve such confidentiality, except that the Secretary may release or make public any such information in any aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such information. Nothing in this subsection shall be interpreted or construed to prevent the use for conservation and management purposes by the Secretary, or with the approval of the Secretary, the Council, of any information submitted in compliance with regulations promulgated under this Act or the use, release, or publication of bycatch data pursuant to paragraph (1)(F)..

(c) **RESTRICTION ON USE OF CERTAIN DATA.**—(1) The Secretary shall promulgate regulations to restrict the use, in civil enforcement or criminal proceedings under this Act, the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.), or the Endangered Species Act (16 U.S.C. 1531 et seq.), of information collected by voluntary fishery data collectors, including sea samplers, while aboard any vessel for conservation and management purposes if the presence of such a fishery data collector aboard is not required by any of such Acts or regulations thereunder.

(2) The Secretary may not require the submission of a Federal or State income tax return or statement as a prerequisite for issuance of a Federal fishing permit until such time as the Secretary has promulgated regulations to ensure the confidentiality of information contained in such return or statement, to limit the information submitted to that necessary to achieve a demonstrated conservation and management purpose, and to provide appropriate penalties for violation of such regulations.”;

(d) **CONTRACTING AUTHORITY.**—In case of a program for which—

(1) the recipient of a grant, contract, or other financial assistance is specified by statute to be, or has customarily been, a State, Council, or a Marine Fisheries Commission; or

(2) the Secretary has entered into a cooperative agreement with a State, Council, or Marine Fisheries Commission, such financial assistance may be provided by the Secretary to that recipient on a sole-source basis, notwithstanding any other provision of law.

(e) **RESOURCE ASSESSMENTS.**—(1) The Secretary may use the private sector to provide vessels, equipment, and services necessary to survey the fishery resources of the United States when the arrangement will yield statistically reliable results.

(2) *The Secretary, in consultation with the appropriate Council and the fishing industry—*

(A) may structure competitive solicitations under paragraph (1) so as to compensate a contractor for a fishery resources survey by allowing the contractor to retain for sale fish harvested during the survey voyage; and

(B) in the case of a survey during which the quantity or quality of fish harvested is not expected to be adequately compensatory, may structure those solicitations so as to provide that compensation by permitting the contractor to harvest on a subsequent voyage and retain for sale a portion of the allowable catch of the surveyed fishery.

(3) *The Secretary shall undertake efforts to expand annual fishery resource assessments in all regions of the Nation.*

[SEC. 403. FISHERMEN'S PROTECTIVE ACT AMENDMENTS.

[(a) AMENDMENTS.—The Act of August 27, 1954 (22 U.S.C. 1972), is amended—

[(1) by amending section 2 thereof to read as follows:

["Sec. 2. If—

["(1) Any vessel of the United States is seized by a foreign country on the basis of claims in territorial waters or the high seas which are not recognized by the United States; or

["(2) any general claim of any foreign country to exclusive fishery management authority is recognized by the United States, and any vessel of the United States is seized by such foreign country on the basis of conditions and restrictions under such claim, if such conditions and restrictions—

["(A) are unrelated to fishery conservation and management,

["(B) fail to consider and take into account traditional fishing practices of vessels of the United States,

["(C) are greater or more onerous than the conditions and restrictions which the United States applies to foreign fishing vessels subject to the exclusive fishery management authority of the United States (as established in title I of the Fishery Conservation and Management Act of 1976), or

["(D) fail to allow fishing vessels of the United States equitable access to fish subject to such country's exclusive fishery management authority;

and there is no dispute as to the material facts with respect to the location or activity of such vessel at the time of such seizure, the Secretary of State shall immediately take such steps as are necessary—

["(i) for the protection of such vessel and for the health and welfare of its crew;

["(ii) to secure the release of such vessel and its crew; and

["(iii) to determine the amount of any fine, license, fee, registration fee, or other direct charge reimbursable under section 3(a) of this Act.”; and

[(2) by amending section 3(a) thereof by inserting immediately before the last sentence thereof the following new sentence: “For purposes of this section, the term ‘other direct

charge' means any levy, however characterized or computed (including, but not limited to, any computation based on the value of a vessel or the value of fish or other property on board a vessel), which is imposed in addition to any fine, license fee, or registration fee."

[(b) EFFECTIVE DATE.—The amendment made by subsection (a)(1) shall take effect March 1, 1977. The amendment made by subsection (a)(2) shall apply with respect to seizures of vessels of the United States occurring on or after December 31, 1974.]

SEC. 403. [16 U.S.C. ???] OBSERVERS.

(a) *GUIDELINES FOR CARRYING OBSERVERS.*— Within one year of the date of enactment of the Sustainable Fisheries Act, the Secretary shall promulgate regulations, after notice and public comment, for fishing vessels that carry observers. The regulations shall include guidelines for determining—

(1) when a vessel is not required to carry an observer on board because the facilities of such vessel for the quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized; and

(2) actions which vessel owners or operators may reasonably be required to take to render such facilities adequate and safe.

(b) *TRAINING.*—The Secretary, in cooperation with the appropriate States and the National Sea Grant College Program, shall—

(1) establish programs to ensure that each observer receives adequate training in collecting and analyzing data necessary for the conservation and management purposes of the fishery to which such observer is assigned; and

(2) require that an observer demonstrate competence in fisheries science and statistical analysis at a level sufficient to enable such person to fulfill the responsibilities of the position;

(3) ensure that an observer has received adequate training in basic vessel safety; and

(4) make use of university training facilities and resources, where possible, in carrying out this subsection.

(c) *WAGES AS MARITIME LIENS.*—Claims for observers' wages shall be considered maritime liens against the vessel and be accorded the same priority as seamen's liens under admiralty and general maritime law.

(d) *OBSERVER STATUS.*—(1) An observer on a vessel and under contract to carry out responsibilities under this Act or the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) shall be deemed to be a Federal employee for the purpose of compensation for work injuries under the Federal Employee Compensation Act (5 U.S.C. 8101 et seq.)

(2) Paragraph (1) does not apply if the observer is engaged by the owner, master, or individual in charge of the vessel to perform any duties in service to the vessel.

[SEC. 404. MARINE MAMMAL PROTECTION ACT AMENDMENT.

[(a) AMENDMENT.—Section 3(15)(B) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1362(15)(B)) is amended by striking out "the fisheries zone established pursuant to the Act of October 14, 1966." and inserting in lieu thereof "the waters included with

a zone, contiguous to the territorial sea of the United States, of which the inner boundary is a line coterminous with the seaward boundary of each coastal State, and the outer boundary is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured.”.

[(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect March 1, 1977.]

SEC. 404. [16 U.S.C. ???] FISHERIES RESEARCH.

(a) *IN GENERAL.*—The Secretary shall initiate and maintain, in cooperation with the Councils, a comprehensive program of fishery research to carry out and further the purposes, policy, and provisions of this Act. Such program shall be designed to acquire knowledge and information, including statistics, on fishery conservation and management and on the economics of the fisheries.

(b) *STRATEGIC PLAN.*—Within one year after the date of enactment of the Sustainable Fisheries Act, and at least every 3 years thereafter, the Secretary shall develop and publish in the Federal Register a strategic plan for fisheries research for the five years immediately following such publication. The plan shall—

(1) identify and describe a comprehensive program with a limited number of priority objectives for research in each of the areas specified in subsection (c);

(2) indicate the goals and timetables for the program described in paragraph (1); and

(3) provide a role for commercial fishermen in such research, including involvement in field testing.

(4) provide for collection and dissemination, in a timely manner, of complete and accurate data concerning fishing activities, catch, effort, stock assessments, and other research conducted under this section.

(c) *AREAS OF RESEARCH.*—The areas of research referred to in subsection (a) are as follows:

(1) Research to support fishery conservation and management, including but not limited to, research on the economics of fisheries and biological research concerning the abundance and life history parameters of stocks of fish, the interdependence of fisheries or stocks of fish, the identification of essential fish habitat, the impact of pollution on fish populations, the impact of wetland and estuarine degradation, and other factors affecting the abundance and availability of fish.

(2) Conservation engineering research, including the study of fish behavior and the development and testing of new gear technology and fishing techniques to minimize bycatch and any adverse effects on essential fish habitat and promote efficient harvest of target species.

(3) Information management research, including the development of a fishery information base and an information management system that will permit the full use of data in the support of effective fishery conservation and management.

(d) *PUBLIC NOTICE.*—In developing the plan required under subsection (a), the Secretary shall consult with relevant Federal, State, and international agencies, scientific and technical experts, and other interested persons, public and private, and shall publish a proposed plan in the Federal Register for the purpose of receiving

public comment on the plan. The Secretary shall ensure that affected commercial fishermen are actively involved in the development of the portion of the plan pertaining to conservation engineering research. Upon final publication in the Federal Register, the plan shall be submitted by the Secretary to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives.

[SEC. 405. ATLANTIC TUNAS CONVENTION ACT AMENDMENT.]

[(a) AMENDMENT.]—Section 2(4) of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971(4)) is amended by striking out “the fisheries zone established pursuant to the Act of October 14, 1966 (80 Stat. 908; 16 U.S.C. 1091—1094),” and inserting in lieu thereof “the waters included within a zone, contiguous to the territorial sea of the United States, of which the inner boundary is a line coterminous with the seaward boundary of each coastal State, and the outer boundary is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured.”.]

SEC. 405. [16 U.S.C. ???] INCIDENTAL HARVEST RESEARCH.

(a) COLLECTION OF DATA.—Within 9 months after the date of enactment of the Sustainable Fisheries Act, the Secretary shall, after consultation with the Gulf of Mexico Fishery Management Council and South Atlantic Fishery Management Council, conclude the collection of data in the program to assess the impact on fishery resources of incidental harvest by the shrimp trawl fishery within the authority of such Councils. Within the same time period, the Secretary shall make available to the public aggregated summaries of data collected prior to June 30, 1994 under such program.

(b) IDENTIFICATION OF STOCK.—The program concluded pursuant to subsection (a) shall provide for the identification of stocks of fish which are subject to significant incidental harvest in the course of normal shrimp trawl fishing activity.

(c) COLLECTION AND ASSESSMENT OF SPECIFIC STOCK DATA.—For stocks of fish identified pursuant to subsection (b), with priority given to stocks which (based upon the best available scientific information) are considered to be overfished, the Secretary shall conduct—

(1) a program to collect and evaluate data on the nature and extent (including the spatial and temporal distribution) of incidental mortality of such stocks as a direct result of shrimp trawl fishing activities;

(2) an assessment of the status and condition of such stocks, including collection of information which would allow the estimation of life history parameters with sufficient accuracy and precision to support sound scientific evaluation of the effects of various management alternatives on the status of such stocks; and

(3) a program of data collection and evaluation for such stocks on the magnitude and distribution of fishing mortality and fishing effort by sources of fishing mortality other than shrimp trawl fishing activity.

(d) BYCATCH REDUCTION PROGRAM.—Not later than twelve months after the enactment of the Sustainable Fisheries Act, the

Secretary shall, in cooperation with affected interests, and based upon the best scientific information available, complete a program to—

(1) develop technological devices and other changes in fishing operations necessary and appropriate to minimize the incidental mortality of bycatch in the course of shrimp trawl activity to the extent practicable, taking into account the level of bycatch mortality in the fishery on November 28, 1990;

(2) evaluate the ecological impacts and the benefits and costs of such devices and changes in fishing operations; and

(3) assess whether it is practicable to utilize bycatch which is not avoidable.

(e) REPORT TO CONGRESS.—The Secretary shall, within one year of completing the programs required by this section, submit a detailed report on the results of such programs to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives.

(f) IMPLEMENTATION CRITERIA.— Any conservation and management measure implemented under this Act to reduce the incidental mortality of bycatch in the course of shrimp trawl fishing must be consistent with—

(1) measures applicable to fishing throughout the range of the bycatch species concerned; and

(2) the need to avoid any serious adverse environmental impacts on such bycatch species or the ecology of the affected area.

【§ 1882. Authorization of appropriations

【There are authorized to be appropriated to the Secretary, for purposes of carrying out the provisions of this Act, not to exceed the following sums:

【(1) \$5,000,000 for the fiscal year ending June 30, 1976.

【(2) \$5,000,000 for the transitional fiscal quarter ending September 30, 1976.

【(3) \$25,000,000 for the fiscal year ending September 30, 1977.

【(4) \$30,000,000 for the fiscal year ending September 30, 1978.

【(5) \$30,000,000 for the fiscal year ending September 30, 1979.

【(6) \$33,000,000 for the fiscal year ending September 30, 1980.

【(7) \$40,000,000 for the fiscal year ending September 30, 1981.

【(8) \$47,000,000 for the fiscal year ending September 30, 1982.

【(9) \$59,000,000 for the fiscal year ending September 30, 1983.

【(10) \$64,000,000 for the fiscal year ending September 30, 1984.

【(11) \$69,000,000 for the fiscal year ending September 30, 1985.

【(12) \$69,000,000 for fiscal year 1986.

【(13) \$70,800,000 for fiscal year 1987.

【(14) \$72,900,000 for fiscal year 1988.

【(15) \$75,000,000 for fiscal year 1989.

[(16) \$77,200,000 for the fiscal year ending September 30, 1990.

[(17) \$94,000,000 for the fiscal year ending September 30, 1991, of which \$6,500,000 shall be used for enforcement and \$5,000,000 shall be used to increase research and assessment efforts.

[(18) \$98,000,000 for the fiscal year ending September 30, 1992.

[(19) \$102,000,000 for the fiscal year ending September 30, 1993.]

SEC. 406. [16 U.S.C. ???] FISHERIES ECOSYSTEM MANAGEMENT RESEARCH.

(a) *ESTABLISHMENT OF PANEL.*—Not later than 180 days after the enactment of the Sustainable Fisheries Act, the Secretary shall establish a fisheries ecosystem management advisory panel under this Act to develop recommendations to expand the application of ecosystem principles in fishery conservation and management activities.

(b) *PANEL MEMBERSHIP.*—The advisory panel shall consist of not more than 20 individuals and include—

(1) individuals with expertise in the structures, functions, and physical and biological characteristics of ecosystems; and

(2) representatives from the Councils, States, fishing industry, conservation organizations, or others with expertise in the management of marine resources.

(c) *RECOMMENDATIONS.*—Prior to selecting advisory panel members, the Secretary shall, with respect to panel members described in subsection (b)(1), solicit recommendations from the National Academy of Sciences.

(d) *ECOSYSTEM REPORT.*—Within two years of the date of enactment of this Act, the Secretary shall submit to the Congress a completed report of the fisheries ecosystem management advisory panel, which shall include—

(1) an analysis of the extent to which ecosystem principles are being applied in fishery conservation and management activities, including research activities;

(2) proposed actions by the Secretary and by the Congress that should be undertaken to expand the application of ecosystem principles in fishery conservation and management; and

(3) such other information as may be appropriate.

(e) *PROCEDURAL MATTER.*—The procedural matters under section 302(j) with respect to advisory panels shall apply to the Fisheries Ecosystem Management advisory panel.

SEC. 407. [16 U.S.C. ???] GULF OF MEXICO RED SNAPPER RESEARCH.

(a) *THE SECRETARY OF COMMERCE SHALL ENSURE THAT.*—

(1) no later than one year after the effective date of the Sustainable Fisheries Act, an independent peer review is completed of whether—

(A) the fishery statistics of the Secretary concerning the red snapper fishery in the Gulf of Mexico accurately and completely account for all commercial and recreational harvests and fishing effort on the stock;

(B) the scientific methods, data and models used by the Secretary to assess the status and trends of the Gulf of Mexico red snapper stock are appropriate under this Act;

(C) the scientific information upon which the fishery management plan for red snapper in the Gulf of Mexico is based is appropriate under this Act;

(D) the management measures in the fishery management plan for red snapper in the Gulf of Mexico are appropriate for conserving and managing the red snapper fishery under this Act; and

(E) the benefits and costs of establishing an individual fishing quota program for the red snapper fishery in the Gulf of Mexico and reasonable alternatives thereto have been properly evaluated under this Act; and

(2) commercial and recreational fishermen in the red snapper fishery in the Gulf of Mexico are provided an opportunity to—

(A) participate in the peer review under paragraph (1); and

(B) provide information to the Secretary of Commerce in connection with the review of fishery statistics under paragraph (a)(1) without being subject to penalty under this Act or other applicable law for any past violation of a requirement to report such information to the Secretary of Commerce.

(b) The Secretary of Commerce shall submit a detailed written report on the findings of the peer review conducted under subsection (a)(1) to the Gulf of Mexico Fishery Management Council no later than one year after the effective date of the Sustainable Fisheries Act.

CHAPTER 61. INTERJURISDICTIONAL FISHERIES

§ 4107. Authorization of appropriations

[(a) GENERAL APPROPRIATIONS.—There are authorized to be appropriated to the Department of Commerce for apportionment to carry out the purposes of this title \$5,000,000 for each of the fiscal years 1989, 1990, 1991, 1992, 1993, 1994, and 1995.]

(a) GENERAL APPROPRIATIONS.—There are authorized to be appropriated to the Department of Commerce for apportionment to carry out the purposes of this title—

(1) \$3,400,000 for fiscal year 1996;

(2) \$3,900,000 for fiscal year 1997;

(3) \$4,400,000 for fiscal years 1998, 1999, and 2000.

(b) ADDITIONAL APPROPRIATIONS.—In addition to the amounts authorized in subsection (a), there are authorized to be appropriated to the Department of Commerce \$65,000,000 for each of the fiscal years [1994 and 1995,] 1994, 1995, 1996, 1997, 1998, 1999, and 2000 which shall be available in such amounts as the Secretary may determine appropriate for the purposes of this title; except that—

(1) in providing funds to States under this subsection, the Secretary shall give a preference to those States regarding which the Secretary determines there is a commercial fishery failure or serious disruption affecting future production due to a fishery resource disaster arising from natural or undeter-

mined causes, and any sums made available under this subsection may be used either by the States or directly by the Secretary in cooperation with the States for any purpose that the Secretary determines is appropriate to restore the fishery affected by such a failure or to prevent a similar failure in the future;

(2) the funds authorized to be appropriated under this subsection shall not be available to the Secretary for use as grants for chartering fishing vessels; and

(3) the Federal share of the cost of any activity carried out with an amount appropriated under the authority of this subsection shall be 75 percent of the cost of that activity.

Amounts appropriated under this subsection shall remain available until expended.

(c) DEVELOPMENT OF MANAGEMENT PLANS.—In addition to the amounts authorized under subsections (a) and (b), there are authorized to be appropriated to the Department of Commerce **[\$350,000 for each of the fiscal years 1989, 1990, 1991, 1992, and 1993, and \$600,000 for each of the fiscal years 1994 and 1995,]** *\$650,000 for fiscal year 1996, \$700,000 for fiscal year 1997, \$750,000 for fiscal years 1998, 1999, and 2000*, to support the efforts of the following interstate commissions to develop interstate fishery management plans for interjurisdictional fishery resources:

(1) The commission established by the Atlantic States Marine Fisheries Compact, as consented to and approved by Public Law 77-539 (56 Stat. 267), approved May 4, 1942.

(2) The commission established by the Pacific Marine Fisheries Compact, as consented to and approved by Public Law 80-232 (61 Stat. 419), approved July 24, 1947.

(3) The commission established by the Gulf States Marine Fisheries Compact, as consented to and approved by Public Law 81-66 (63 Stat. 70), approved May 19, 1949.

(d) GRANTS TO COMMERCIAL FISHERMEN.—

(1) In addition to the amounts authorized under subsections (a), (b), and (c), there are authorized to be appropriated to the Department of Commerce \$65,000,000 for fiscal year 1992 to enable the Secretary to **[award grants to persons engaged in commercial fisheries, for uninsured losses determined by the Secretary to have been suffered]** *assist persons engaged in commercial fisheries, either directly through assistance to persons or indirectly through assistance to State and local government agencies and non-profit organizations, for projects or other measures designed to alleviate impacts determined by the Secretary to have been incurred* as a direct result of a fishery resource disaster arising from Hurricane Hugo, Hurricane Andrew, Hurricane Iniki, or any other natural disaster. Amounts appropriated under this subsection shall remain available until expended.

(2) The Secretary shall determine the extent, and the beginning and ending dates, of any fishery resource disaster under this subsection.

(3) Eligibility for **[a grant]** *assistance* under this **[subsection]** *subsection, if provided directly to a person*, shall be limited to any person that has less than \$2,000,000 in **[gross**

revenues annually,] *net annual revenue from commercial fisheries*, as determined by the Secretary.

[(4) A person may receive a grant under this subsection for up to 75 percent of any uninsured commercial fishery loss resulting from such a fishery resource disaster (to the extent that such losses have not been compensated by other Federal and State programs), but shall receive no more than \$100,000 in the aggregate for all such losses suffered as a result of any particular fishery resource disaster.]

(4) Assistance may not be provided under this subsection as part of a fishing capacity reduction program in a fishery unless the Secretary determines that—

(A) adequate conservation and management measures are in place in that fishery; and

(B) adequate measures are in place to prevent the replacement of fishing capacity eliminated by the program in that fishery.

(5) The Secretary shall establish, after notice and opportunity for public comment, appropriate limitations, terms, and conditions for awarding grants under this subsection, including provisions specifying the means by which applicants must demonstrate claimed losses and limiting the aggregate amounts that may be paid to persons that are affiliated with each other or under common ownership.

(6) As used in this subsection, the term “person” means any individual or any corporation, partnership, trust, association, or other nongovernmental entity.

CHAPTER 71. ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

§ 5102. Definitions

In this title, the following definitions apply:

(1) The term “coastal fishery management plan” means a plan for managing a coastal fishery resource, or an amendment to such plan, prepared and adopted by the Commission, that—

(A) contains information regarding the status of the resource and related fisheries; *and*

(B) specifies conservation and management actions to be taken by the [States; and] *States*.

[(C) recommends actions to be taken by the Secretary in the exclusive economic zone to conserve and manage the fishery.]

(2) The term “coastal fishery resource” means any fishery, any species of fish, or any stock of fish that moves among, or is broadly distributed across, waters under the jurisdiction of two or more States or waters under the jurisdiction of one or more States and the exclusive economic zone.

(3) The term “Commission” means the Atlantic States Marine Fisheries Commission established under the interstate compact consented to and approved by the Congress in Public Laws 77–539 and 81–721.

(4) The term “conservation” means the restoring, rebuilding, and maintaining of any coastal fishery resource and the ma-

rine environment, in order to assure the availability of coastal fishery resources on a long-term basis.

(5) The term “Councils” means Regional Fishery Management Councils established under section 302 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852).

(6) The term “exclusive economic zone” means the exclusive economic zone of the United States established by Proclamation Number 5030, dated March 10, 1983 [16 U.S.C. 1453 note]. For the purposes of this title, the inner boundary of that zone is a line coterminous with the seaward boundary of each of the coastal States, and the outer boundary of that zone is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured.

(7) The term “fish” means finfish, mollusks, crustaceans, and all other forms of marine animal life other than marine mammals and birds.

(8) The term “fishery” means—

(A) one or more stocks of fish that can be treated as a unit for purposes of conservation and management and that are identified on the basis of geographical, scientific, technical, commercial, recreational, or economic characteristics; or

(B) any fishing for such stocks.

(9) The term “fishing” means—

(A) the catching, taking, or harvesting of fish;

(B) the attempted catching, taking, or harvesting of fish;

(C) any other activity that can be reasonably expected to result in the catching, taking, or harvesting of fish; or

(D) any operations at sea in support of, or in preparation for, any activity described in subparagraphs (A) through (C).

Such term does not include any scientific research activity or the catching, taking, or harvesting of fish in an aquaculture operation.

(10) The term “implement and enforce” means to enact and implement laws or regulations as required to conform with the provisions of a coastal fishery management plan and to assure compliance with such laws or regulations by persons participating in a fishery that is subject to such plan.

(11) The term “person” means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

(12) The term “Secretary” means the Secretary of Commerce.

(13) The term “State” means Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, the District of Columbia, or the Potomac River Fisheries Commission.

§ 5103. State-Federal cooperation in Atlantic coastal fishery management

(a) **FEDERAL SUPPORT FOR STATE COASTAL FISHERIES PROGRAMS.**—The Secretary in cooperation with the Secretary of the Interior shall develop and implement a program to support the interstate fishery management efforts of the Commission. The program shall include activities to support and enhance State cooperation in collection, management, and analysis of fishery data; law enforcement; habitat conservation; fishery research, including biological and socioeconomic research; and fishery management planning.

(b) **FEDERAL REGULATION IN EXCLUSIVE ECONOMIC ZONE.**—

(1) In the absence of an approved and implemented fishery management plan under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), and after consultation with the appropriate Councils, the Secretary may implement regulations to govern fishing in the exclusive economic zone that are—

(A) **[necessary to support]** *compatible with* the effective implementation of a coastal fishery management plan; and

(B) consistent with the national standards set forth in section 301 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1851).

The regulations may include measures recommended by the Commission to the Secretary that are necessary to support the provisions of the coastal fishery management plan. Regulations issued by the Secretary to implement an approved fishery management plan prepared by the appropriate Councils or the Secretary under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) shall supersede any conflicting regulations issued by the Secretary under this subsection.

(2) The provisions of sections 307, 308, 309, 310, and 311 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1857, 1858, 1859, 1860, and 1861) regarding prohibited acts, civil penalties, criminal offenses, civil forfeitures, and enforcement shall apply with respect to regulations issued under this subsection as if such regulations were issued under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

§ 5108. Authorization of appropriations

To carry out the provisions of this title, there are authorized to be appropriated \$3,000,000 for fiscal year 1994, \$5,000,000 for fiscal year 1995, **[and]** \$7,000,000 for fiscal year **[1996.]** 1996, and \$7,000,000 for each of fiscal years 1997, 1998, 1999, and 2000.

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TITLE 46, UNITED STATES CODE, APPENDIX

FEDERAL SHIP MORTGAGE INSURANCE

SEC. 1111. (a) Pursuant to the authority granted under section 1103(a) of this title, the Secretary may, under such terms and conditions as the Secretary shall prescribe by regulation, guarantee and

make commitments to guarantee the principal of, and interest on, obligations which aid in refinancing, in a manner consistent with the reduced cash flows available to obligors because of reduced harvesting allocations during implementation of a fishery recovery effort, existing obligations relating to fishing vessels or fishery facilities. Guarantees under this section shall be subject to all other provisions of this title not inconsistent with the provisions of this section. The provisions of this section shall, notwithstanding any other provisions of this title, apply to guarantees under this section.

(b) Obligations eligible to be refinanced under this section shall include all obligations which financed or refinanced any expenditures associated with the ownership or operation of fishing vessels or fishery facilities, including but not limited to expenditures for reconstructing, reconditioning, purchasing, equipping, maintaining, repairing, supplying, or any other aspect whatsoever of operating fishing vessels or fishery facilities, excluding only such obligations—

(1) which were not in existence prior to the time the Secretary approved a fishery rebuilding effort eligible for guarantees under this section and whose purpose, in whole or in part, involved expenditures which resulted in increased vessel harvesting capacity; and

(2) as may be owed by an obligor either to any stockholder, partner, guarantor, or other principal of such obligor or to any unrelated party if the purpose of such obligation had been to pay an obligor's preexisting obligation to such stockholder, partner, guarantor, or other principal of such obligor.

(c) The Secretary may refinance up to 100 percent of the principal of, and interest on, such obligations, but, in no event, shall the Secretary refinance an amount exceeding 75 percent of the unencumbered (after deducting the amount to be refinanced by guaranteed obligations under this section) market value, as determined by an independent marine surveyor or other competent person for a fishery facility, of the fishing vessel or fishery facility to which such obligations relate plus 75 percent of the unencumbered (including but not limited to homestead exemptions) market value, as determined by an independent marine surveyor, of all other supplementary collateral. The Secretary shall do so regardless of—

(1) any fishing vessel or fishery facility's actual cost or depreciated actual cost; and

(2) any limitations elsewhere in this title on the amount of obligations to be guaranteed or such amount's relationship to actual cost or depreciated actual cost.

(d) Obligations guaranteed under this section shall have such maturity dates and other provisions as are consistent with the intent and purpose of this section (including but not limited to provisions for obligors to pay only the interest accruing on the principal of such obligations during the period in which fisheries stocks are recovering, with the principal and interest accruing thereon being fully amortized between the date stock recovery is projected to be completed and the maturity date of such obligations).

(e) No provision of section 1104A(d) of this title shall apply to obligations guaranteed under this section.

(f) The Secretary shall neither make commitments to guarantee nor guarantee obligations under this section unless—

(1) the Secretary has first approved the fishery rebuilding effort for the fishery in which vessels eligible for the guarantee of obligations under this section are participants and has determined that such guarantees will have no adverse impacts on other fisheries in the region;

(2) the Secretary has considered such factors as—

(A) the projected degree and duration of reduced fisheries allocations;

(B) the projected reduction in fishing vessel and fishery facility cash flows;

(C) the projected severity of the impact on fishing vessels and fishery facilities;

(D) the projected effect of the fishery rebuilding effort;

(E) the provisions of any related fishery management plan under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.); and

(F) the need for and advisability of guarantees under this section;

(3) the Secretary finds that the obligation to be guaranteed will, considering the projected effect of the fishery recovery effort involved and all other aspects of the obligor, project, property, collateral, and any other aspects whatsoever of the obligation involved, constitute, in the Secretary's opinion, a reasonable prospect of full repayment; and

(4) the obligors agree to provide such security and meet such other terms and conditions as the Secretary may, pursuant to regulations prescribed under this section, require to protect the interest of the United States and carry out the purpose of this section.

(g) All obligations guaranteed under this section shall be accounted for separately, in a subaccount of the Federal Ship Financing Fund to be known as the Fishery Recovery Refinancing Account, from all other obligations guaranteed under the other provisions of this title and the assets and liabilities of the Federal Ship Financing Fund and the Fishery Recovery Refinancing Account shall be segregated accordingly.

(h) For the purposes of this section, the term 'fishery rebuilding effort' means a fishery management plan, amendment, or regulations required under section 304(e) of the Magnuson Fishery Conservation and Management Act to rebuild a fishery which the Secretary has determined to be a commercial fishery failure under section 316 of such Act.

SEC. 1112. (a) The Secretary is authorized to guarantee the repayment of debt obligations issued by entities under this section. Debt obligations to be guaranteed may be issued by any entity that has been approved by the Secretary and has agreed with the Secretary to such conditions as the Secretary deems necessary for this section to achieve the objective of the program and to protect the interest of the United States.

(b) Any debt obligation guaranteed under this section shall—

(1) be treated in the same manner and to the same extent as other obligations guaranteed under this title, except with respect to provisions of this title that by their nature cannot be applied to obligations guaranteed under this section;

(2) have the proceeds paid into a separate subaccount of the fishing capacity reduction fund established under this section;

(3) not exceed \$100,000,000 in an unpaid principal amount outstanding at any one time for a program;

(4) have such maturity (not to exceed 20 years), take such form, and contain such conditions as the Secretary determines necessary for the program to which they relate;

(5) have as the exclusive source of repayment (subject to subsection (c)(2)) and as the exclusive payment security, the fees established under the program; and

(6) at the discretion of the Secretary be issued in the public market or sold to the Federal Financing Bank.

(c)(1) There is established in the Treasury of the United States a separate account which shall be known as the fishing capacity reduction fund (referred to in this section as the 'fund'). Within the fund, at least one subaccount shall be established for each program into which shall be paid all proceeds from debt obligations and other amounts and fees authorized for the program.

"(c)(1) There is established in the Treasury of the United States a separate account which shall be known as the fishing capacity reduction fund (referred to in this section as the 'fund'). Within the fund, at least one subaccount shall be established for each program into which shall be paid all proceeds from debt obligations and other amounts and fees authorized for the program.

(2) Amounts in the fund shall be available only to the Secretary—

(A) without appropriation or fiscal year limitation, to pay the cost of the program; and

(B) from the separate subaccount established under subsection (b)(2), to pay debt obligations incurred by entities under this section, Provided that funds available for this purpose from other amounts available for the program may also be used to pay such debt obligations.

(3) Sums in the fund that are not currently needed for the purpose of this section shall be kept on deposit or invested in obligations of the United States.

(d) The Secretary is authorized and directed to issue such regulations as the Secretary deems necessary to carry out this section.

(e) For the purposes of this section, the term "program" means a fishing capacity reduction program established under section 315 of the Magnuson Fishery Conservation and Management Act.

TITLE 46. APPENDIX. SHIPPING

CHAPTER 27. MERCHANT MARINE ACT, 1936

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FEDERAL SHIP MORTGAGE INSURANCE

§ 1274. Eligibility for guarantee

(a) PURPOSE OF OBLIGATIONS.—Pursuant to the authority granted under section 1103(a) [46 U.S.C. App. 1273(a)], the Secretary upon such terms as he shall prescribe, may guarantee or make a

commitment to guarantee, payment of the principal of and interest on an obligation which aids in—

(1) financing, including reimbursement of an obligor for expenditures previously made for, construction, reconstruction, or reconditioning of a vessel (including an eligible export vessel), which is designed principally for research, or for commercial use (A) in the coastwise or intercoastal trade; (B) on the Great Lakes, or on bays, sounds, rivers, harbors, or inland lakes of the United States; (C) in foreign trade as defined in section 905 of this Act for purposes of title V of this Act; or (D) as an ocean thermal energy conversion facility or plantship; (E) with respect to floating drydocks in the construction, reconstruction, reconditioning, or repair of vessels; or (F) with respect to an eligible export vessel, in world-wide trade; Provided, however, That no guarantee shall be entered into pursuant to this paragraph (a)(1) later than one year after delivery, or redelivery in the case of reconstruction or reconditioning of any such vessel unless the proceeds of the obligation are used to finance the construction, reconstruction, or reconditioning of a vessel or vessels, or facilities or equipment pertaining to marine operations;

(2) financing, including reimbursement of an obligor for expenditures previously made for, construction, reconstruction, reconditioning, or purchase of a vessel or vessels owned by citizens or nationals of the United States or citizens of the Northern Mariana Islands which are designed principally for research, or for commercial use in the fishing trade or industry;

(3) financing the purchase, reconstruction, or reconditioning of vessels or fishery facilities for which obligations were guaranteed under this title [46 U.S.C. App. 1271 et seq.] that, under the provisions of section 1105 [46 U.S.C. App. 1275]:

(A) are vessels or fishery facilities for which obligations were accelerated and paid;

(B) were acquired by the Fund; or

(C) were sold at foreclosure instituted by the Secretary;

(4) financing, in whole or in part, the repayment to the United States of any amount of construction-differential subsidy paid with respect to a vessel pursuant to title V of this Act [46 U.S.C. App. 1151 et seq.], as amended;

(5) refinancing existing obligations issued for one of the purposes specified in (1), (2), (3), or (4) whether or not guaranteed under this title [46 U.S.C. App. 1271 et seq.], including, but not limited to, short-term obligations incurred for the purpose of obtaining temporary funds with the view to refinancing from time to time; **[or]**

(6) financing or refinancing, including, but not limited to, the reimbursement of obligors for expenditures previously made for, the construction, reconstruction, reconditioning, or purchase of fishery **[facilities.] facilities; or**

(7) financing or refinancing, including, but not limited to, the reimbursement of obligors for expenditures previously made for, the purchase of individual fishing quotas in accordance with section 303(d)(4) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1853(d)(4)).

Any obligation guaranteed under **[paragraph (6)]** *paragraphs (6) and (7)* shall be treated, for purposes of this title [46 U.S.C. App. 1271 et seq.], in the same manner and to the same extent as an obligation guaranteed under this title [46 U.S.C. App. 1271 et seq.] which aids in the construction, reconstruction, reconditioning, or purchase of a vessel; except with respect to provisions of this title [46 U.S.C. App. 1271 et seq.] that by their nature can only be applied to vessels.

(b) CONTENTS OF OBLIGATIONS.—Obligations guaranteed under this title [46 U.S.C. App. 1271 et seq.]—

(1) shall have an obligor approved by the Secretary as responsible and possessing the ability, experience, financial resources, and other qualifications necessary to the adequate operation and maintenance of the vessel or vessels which serve as security for the guarantee of the Secretary;

(2) subject to the provisions of subsection (c)(1) and subsection (i), shall be in an aggregate principal amount which does not exceed 75 per centum of the actual cost or depreciated actual cost, as determined by the Secretary, of the vessel which is used as security for the guarantee of the Secretary: Provided, however, That in the case of a vessel, the size and speed of which are approved by the Secretary, and which is or would have been eligible for mortgage aid for construction under section 509 of this Act [46 U.S.C. App. 1159] (or would have been eligible for mortgage aid under section 509 of this Act [46 U.S.C. App. 1159] except that the vessel was built with the aid of construction-differential subsidy and said subsidy has been repaid) and in respect of which the minimum downpayment by the mortgagor required by that section would be or would have been 12½ per centum of the cost of such vessel, such obligations may be in an amount which does not exceed 87½ per centum of such actual cost or depreciated actual cost: Provided, further, That the obligations which relate to a barge which is constructed without the aid of construction-differential subsidy, or, if so subsidized, on which said subsidy has been repaid, may be in an aggregate principal amount which does not exceed 87½ per centum of the actual cost or depreciated actual cost thereof: Provided further, That in the case of a fishing vessel or fishery facility, the obligation shall be in an aggregate principal amount **[equal to]** *not to exceed* 80 percent of the actual cost or depreciated actual cost of the fishing vessel or fishery facility, **[except that no debt may be placed under this proviso through the Federal Financing Bank:]** *and obligations related to fishing vessels and fishery facilities under this title shall be placed through the Federal Financing Bank unless placement through the Federal Financing Bank is not reasonably available or placement elsewhere is available at a lower annual yield than placement through the Federal Financing Bank:* Provided further, That in the case of an ocean thermal energy conversion facility or plantship which is constructed without the aid of construction-differential subsidy, such obligations may be in an aggregate principal amount which does not exceed 87½ per centum of the actual cost or depreciated actual cost of the facility or plantship: Provided further, That in the

case of an eligible export vessel, such obligations may be in an aggregate principal amount which does not exceed 87½ [percent] of the actual cost or depreciated actual cost of the eligible export vessel;

(3) shall have maturity dates satisfactory to the Secretary but, subject to the provisions of paragraph (2) of subsection (c) of this section, not to exceed twenty-five years from the date of the delivery of the vessel which serves as security for the guarantee of the Secretary or, if the vessel has been reconstructed or reconditioned, not to exceed the later of (i) twenty-five years from the date of delivery of the vessel and (ii) the remaining years of the useful life of the vessel as determined by the Secretary;

(4) shall provide for payments by the obligor satisfactory to the Secretary;

(5) shall bear interest (exclusive of charges for the guarantee and service charges, if any) at rates not to exceed such per centum per annum on the unpaid principal as the Secretary determines to be reasonable, taking into account the range of interest rates prevailing in the private market for similar loans and the risks assumed by the Secretary;

(6) shall provide, or a related agreement shall provide, that if the vessel used as security for the guarantee of the Secretary is a delivered vessel, the vessel shall be in class A-1, American Bureau of Shipping, or shall meet such other standards as may be acceptable to the Secretary, with all required certificates, including but not limited to, marine inspection certificates of the United States Coast Guard or, in the case of an eligible export vessel, of the appropriate national flag authorities under a treaty, convention, or other international agreement to which the United States is a party, with all outstanding requirements and recommendations necessary for retention of class accomplished, unless the Secretary permits a deferment of such repairs, and shall be tight, staunch, strong, and well and sufficiently tackled, appareled, furnished, and equipped, and in every respect seaworthy and in good running condition and repair, and in all respects fit for service; and

(7) may provide, or a related agreement may provide, if the vessel used as security for the guarantee of the Secretary is a passenger vessel having the tonnage, speed, passenger accommodations and other characteristics set forth in title V of this Act [46 U.S.C. App. 1151 et seq.], as amended, and if the Secretary approves, that the sole recourse against the obligor by the United States for any payments under the guarantee shall be limited to repossession of the vessel and the assignment of insurance claims and that the liability of the obligor for any payments of principal and interest under the guarantee shall be satisfied and discharged by the surrender of the vessel and all right, title, and interest therein to the United States: Provided, That the vessel upon surrender shall be (i) free and clear of all liens and encumbrances whatsoever except the security interest conveyed to the Secretary under this title [46 U.S.C. App. 1271 et seq.], (ii) in class, and (iii) in as good order and condition, ordinary wear and tear excepted, as when ac-

quired by the obligor, except that any deficiencies with respect to freedom from encumbrances, condition and class may, to the extent covered by valid policies of insurance, be satisfied by the assignment to the Secretary of claims of the obligor under such policies.

The Secretary may not establish, as a condition of eligibility for guarantee under this title [46 U.S.C. App. 1271 et seq.], a minimum principal amount for an obligation covering the reconstruction or reconditioning of a fishing vessel or fishery facility. For purposes of this title [46 U.S.C. App. 1271 et seq.], the reconstruction or reconditioning of a fishing vessel or fishery facility does not include the routine minor repair or maintenance of the vessel or facility.

(c) SECURITY.—

(1) The security for the guarantee of an obligation by the Secretary under this title [46 U.S.C. App. 1271 et seq.] may relate to more than one vessel and may consist of any combination of types of security. The aggregate principal amount of obligations which have more than one vessel as security for the guarantee of the Secretary under this title [46 U.S.C. App. 1271 et seq.] may equal, but not exceed, the sum of the principal amount of obligations permissible with respect to each vessel.

(2) If the security for the guarantee of an obligation by the Secretary under this title [46 U.S.C. App. 1271 et seq.] relates to more than one vessel, such obligation may have the latest maturity date permissible under subsection (b) of this section with respect to any of such vessels: Provided, That the Secretary may require such payments of principal, prior to maturity, with respect to all related obligations as he deems necessary in order to maintain adequate security for his guarantee.

(d) RESTRICTIONS.—

(1)(A) No commitment to guarantee, or guarantee of, an obligation shall be made by the Secretary of Transportation unless the Secretary finds that the property or project with respect to which the obligation will be executed will be economically sound. In making that determination, the Secretary shall consider—

(i) the need in the particular segment of the maritime industry for new or additional capacity, including any impact on existing equipment for which a guarantee under this title [46 U.S.C. App. 1271 et seq.] is in effect;

(ii) the market potential for the employment of the vessel over the life of the guarantee;

(iii) projected revenues and expenses associated with employment of the vessel;

(iv) any charters, contracts of affreightment, transportation agreements, or similar agreements or undertakings relevant to the employment of the vessel;

(v) other relevant criteria; and

(vi) for inland waterways, the need for technical improvements, including but not limited to increased fuel efficiency, or improved safety.

(B) No commitment to guarantee, or guarantee of, and obligation shall be made by the Secretary of Commerce unless the Secretary finds, at or prior to the time such commitment is made or guarantee becomes effective, that the property or project with respect to which the obligation will be executed will be, in the Secretary's opinion, economically sound and in the case of fishing vessels, that the purpose of the financing or refinancing is consistent with the wise use of the fisheries resources and with the development, advancement, management, conservation, and protection of the fisheries resources, or with the need for technical improvements including but not limited to increased fuel efficiency or improved safety.

(2) No commitment to guarantee, or guarantee of an obligation may be made by the Secretary under this title [46 U.S.C. App. 1271 et seq.] for the purchase of a used fishing vessel or used fishery facility unless—

(A) the vessel or facility will be reconstructed or reconditioned in the United States and will contribute to the development of the United States fishing industry; or

(B) the vessel or facility will be used in the harvesting of fish from, or for a purpose described in section 1101(k) [46 U.S.C. App. 1271(k)] with respect to, an underutilized fishery.

(3) No commitment to guarantee, or guarantee of an obligation may be made by the Secretary under this title for the construction, reconstruction, or reconditioning of an eligible export vessel unless—

(A) the Secretary finds that the construction, reconstruction, or reconditioning of that vessel will aid in the transition of United States shipyards to commercial activities or will preserve shipbuilding assets that would be essential in time of war or national emergency, and

(B) the owner of the vessel agrees with the Secretary of Transportation that the vessel shall not be transferred to any country designated by the Secretary of Defense as a country whose interests are hostile to the interests of the United States.

(e) GUARANTEE FEES.—The Secretary is authorized to fix a fee for the guarantee of an obligation under this title [46 U.S.C. App. 1271 et seq.]. If the security for the guarantee of an obligation under this title [46 U.S.C. App. 1271 et seq.] relates to a delivered vessel, such fee shall not be less than one-half of 1 per centum per annum nor more than 1 per centum per annum of the average principal amount of such obligation outstanding, excluding the average amount (except interest) on deposit in an escrow fund created under section 1108 of this Act [46 U.S.C. App. 1279a]. If the security for the guarantee of an obligation under this title [46 U.S.C. App. 1271 et seq.] relates to a vessel to be constructed, reconstructed, or reconditioned, such fee shall not be less than one-quarter of 1 per centum per annum nor more than one-half of 1 per centum per annum of the average principal amount of such obligation outstanding, excluding the average amount (except interest) on deposit in an escrow fund created under section 1108 of this Act [46 U.S.C. App. 1279a]. For purposes of this subsection (e), if the secu-

urity for the guarantee of an obligation under this title [46 U.S.C. App. 1271 et seq.] relates both to a delivered vessel or vessels and to a vessel or vessels to be constructed, reconstructed, or reconditioned, the principal amount of such obligation shall be prorated in accordance with regulations prescribed by the Secretary. Fee payments shall be made by the obligor to the Secretary when moneys are first advanced under a guaranteed obligation and at least sixty days prior to each anniversary date thereafter. All fees shall be computed and shall be payable to the Secretary under such regulations as the Secretary may prescribe. Such regulations shall provide a formula for determining the creditworthiness of obligors under which the most creditworthy obligors pay a fee computed on the lowest allowable percentage and the least creditworthy obligors pay a fee which may be computed on the highest allowable percentage (the range of creditworthiness to be based on obligors which have actually issued guaranteed obligations).

(f) INVESTIGATION OF APPLICATIONS.—The Secretary shall charge and collect from the obligor such amounts as he may deem reasonable for the investigation of applications for a guarantee, for the appraisal of properties offered as security for a guarantee, for the issuance of commitments, for services in connection with the escrow fund authorized by section 1108 [46 U.S.C. App. 1279a] and for the inspection of such properties during construction, reconstruction, or reconditioning: Provided, That such charges shall not aggregate more than one-half of 1 per centum of the original principal amount of the obligations to be guaranteed.

(g) DISPOSITION OF MONEYS.—All moneys received by the Secretary under the provisions of sections 1101–1107 of this title [46 U.S.C. App. 1271–1276, 1279] shall be deposited in the Fund.

(h) ADDITIONAL REQUIREMENTS.—Obligations guaranteed under this title [46 U.S.C. App. 1271 et seq.] and agreements relating thereto shall contain such other provisions with respect to the protection of the security interests of the United States (including acceleration, assumptions, and subrogation provisions and the issuance of notes by the obligor to the Secretary), liens and releases of liens, payments of taxes, and such other matters as the Secretary may, in his discretion, prescribe.

(i) LIMITATION ON ESTABLISHMENT OF PERCENTAGE.—The Secretary may not, with respect to—

(1) the general 75 percent or less limitation in subsection (b)(2);

(2) the 87½ percent or less limitation in the 1st, 2nd, 4th, or 5th proviso to subsection (b)(2) or section 1112(b) [46 U.S.C. App. 1279e(b)]; or

(3) the 80 percent or less limitation in the 3rd proviso to such subsection;

establish by rule, regulation, or procedure any percentage within any such limitation that is, or is intended to be, applied uniformly to all guarantees or commitments to guarantee made under this section that are subject to the limitation.

(j) PROCEDURE UPON RECEIVING LOAN GUARANTEE APPLICATION.—

(1) Upon receiving an application for a loan guarantee for an eligible export vessel, the Secretary shall promptly provide to

the Secretary of Defense notice of the receipt of the application. During the 30-day period beginning on the date on which the Secretary of Defense receives such notice, the Secretary of Defense may disapprove the loan guarantee based on the assessment of the Secretary of the potential use of the vessel in a manner that may cause harm to United States national security interests. The Secretary of Defense may not disapprove a loan guarantee under this section solely on the basis of the type of vessel to be constructed with the loan guarantee. The authority of the Secretary to disapprove a loan guarantee under this section may not be delegated to any official other than a civilian officer of the Department of Defense appointed by the President, by and with the advice and consent of the Senate.

(2) The Secretary of Transportation may not make a loan guarantee disapproved by the Secretary of Defense under paragraph (1).

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National Oceanic and Atmospheric Administration Marine Fisheries Program Authorization Act

FISHERIES INFORMATION COLLECTION AND ANALYSIS

SEC. 2. (a) There are authorized to be appropriated to the Department of Commerce * * *.

* * * * *

(e) Of the sums authorized under subsection (a) of this section, no more than \$2,500,000 are authorized to be appropriated for each of the fiscal years **[1992 and 1993]** *1996 and 1997* to enable the National Oceanic and Atmospheric Administration to **[establish]** *operate* the Chesapeake Bay Estuarine Resources Office under section **[306]** *307* of the National Oceanic and Atmospheric Administration Authorization Act of **[1991.]** *1992. Not more than 20 percent of the amount appropriated under the authorization in this subsection shall be used for administrative purposes.*

PUBLIC LAW 102-251

An Act To provide for the designation of the Flower Garden Banks National Marine Sanctuary.

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TITLE III—IMPLEMENTATION OF MARITIME BOUNDARY AGREEMENT AMENDMENTS TO MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT

SEC. 301. (a) PURPOSES.—Section 2(b)(1) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801(b)(1)) is amended by inserting “, and fishery resources in the special areas” immediately before the semicolon at the end.

(b) DEFINITIONS.—Section 3 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802) is amended—

(1) by redesignating paragraphs (24) through (32) as paragraphs (25) through (33), respectively; and

(2) by inserting immediately after paragraph (23) the following new paragraph:

“(24) The term ‘special areas’ means the areas referred to as eastern special areas in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990; in particular, the term refers to those areas east of the maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of Russia is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured.”.

(c) UNITED STATES MANAGEMENT AUTHORITY.—(1) Section 101(a) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1811(a)) is amended by inserting “and special areas” immediately before the period at the end.

(2) Section 101(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1811(b)) is amended by inserting immediately after paragraph (2) the following new paragraph:

“(3) All fishery resources in the special areas.”.

(d) FOREIGN FISHING.—Section 201 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1821) is amended—

(1) in subsection (a)—

(A) by inserting “within the special areas,” immediately before “or for anadromous species”; and

(B) by striking “beyond the exclusive economic zone” and inserting in lieu thereof “beyond such zone or areas”;

(2) in subsection (e)(1)(E)(IV), by inserting “or special areas” immediately after “exclusive economic zone”;

(3) in subsection (i)—

(A) by inserting “or special areas” immediately before the period at the end of paragraph (1)(A);

(B) by inserting “or special areas” immediately after “exclusive economic zone” in paragraph (2)(A); and

(C) by inserting “or special areas” immediately after “exclusive economic zone” in paragraph (2)(B); and

(4) in subsection (j)—

(A) by inserting “, special areas,” immediately after “exclusive economic zone”; and

(B) by inserting “, areas,” immediately after “such zone”.

(e) INTERNATIONAL FISHERY AGREEMENTS.—Section 202 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1822) is amended—

(1) in subsection (b)—

(A) by inserting “or special areas” immediately after “February 28, 1977”); and

(B) by striking “such zone or area” and inserting in lieu thereof “such zone or areas”;

(2) in subsection (c)—

(A) by inserting “or special areas” immediately after “February 28, 1977”; and

(B) by striking “such zone or area” and inserting in lieu thereof “such zone or areas”; and

(3) by adding at the end the following new subsection:

“(g) FISHERY AGREEMENT WITH UNION OF SOVIET SOCIALIST REPUBLICS.—(1) The Secretary of State, in consultation with the Secretary, is authorized to negotiate and conclude a fishery agreement with Russia of a duration of no more than 3 years, pursuant to which—

“(A) Russia will give United States fishing vessels the opportunity to conduct traditional fisheries within waters claimed by the United States prior to the conclusion of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, west of the maritime boundary, including the western special area described in Article 3(2) of the Agreement;

“(B) the United States will give fishing vessels of Russia the opportunity to conduct traditional fisheries within waters claimed by the Union of Soviet Socialist Republics prior to the conclusion of the Agreement referred to in subparagraph (A), east of the maritime boundary, including the eastern special areas described in Article 3(1) of the Agreement;

“(C) catch data shall be made available to the government of the country exercising fisheries jurisdiction over the waters in which the catch occurred; and

“(D) each country shall have the right to place observers on board vessels of the other country and to board and inspect such vessels.

“(2) Vessels operating under a fishery agreement negotiated and concluded pursuant to paragraph (1) shall be subject to regulations and permit requirements of the country in whose waters the fisheries are conducted only to the extent such regulations and permit requirements are specified in that agreement.

“(3) The Secretary of Commerce may promulgate such regulations, in accordance with section 553 of title 5, United States Code, as may be necessary to carry out the provisions of any fishery agreement negotiated and concluded pursuant to paragraph (1).”.

(f) PERMITS FOR FOREIGN FISHING.—Section 204(a) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(a)) is amended—

(1) by inserting “within the special areas,” immediately before “or for anadromous species”; and

(2) by inserting “or areas” immediately after “such zone”.

(g) CONTENTS OF FISHERY MANAGEMENT PLANS.—Section 303(b)(1)(A) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1853(b)(1)(A)) is amended—

(1) by inserting “or special areas,” immediately after “exclusive economic zone”; and

(2) by inserting “or areas” immediately after “such zone”.

(h) PROHIBITED ACTS.—Section 307 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1857) is amended—

(1) in paragraph (1)(K), by inserting “or special areas” immediately after “exclusive economic zone”;

(2) in paragraph (2)(B)—

 【(A) by inserting “within the special areas,” immediately after “exclusive economic zone”; and】

 (B) by inserting “or areas” immediately after “such zone”;

(3) in paragraph (3), by inserting “or special areas” immediately after “exclusive economic zone”; and

(4) in paragraph (4), by inserting “or special areas” immediately after “exclusive economic zone”.

(i) ENFORCEMENT.—Section 311(b)(2) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1861(b)(2)) is amended by inserting “and special areas” immediately after “exclusive economic zone”.

AMENDMENTS TO NORTHERN PACIFIC HALIBUT ACT OF 1982

SEC. 302. (a) DEFINITIONS.—(1) Section 2(c) of the Northern Pacific Halibut Act of 1982 (16 U.S.C. 773(c)) is amended to read as follows:

 “(c) ‘Exclusive economic zone’ means the zone established by Proclamation Numbered 5030, dated March 10, 1983. For purposes of applying this Act, the inner boundary of that zone is a line coterminous with the seaward boundary of each of the coastal States.”.

(2) Section 2 of the Northern Pacific Halibut Act of 1982 (16 U.S.C. 773) is amended by adding at the end the following new subsection:

 “(h) ‘Special areas’ means the areas referred to as eastern special areas in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990; in particular, the term refers to those areas east of the maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of Russia is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured.”.

(b) UNLAWFUL ACTS.—Section 7(b) of the Northern Pacific Halibut Act of 1982 (16 U.S.C. 773e(b)) is amended by striking “fishery conservation zone” and inserting in lieu thereof “exclusive economic zone or special areas”.

AMENDMENTS TO THE FUR SEAL ACT OF 1966

SEC. 303. Section 101 of the Fur Seal Act of 1966 (16 U.S.C. 1151) is amended—

(1) by redesignating subsections (f) through (m) as subsections (g) through (n), respectively; and

(2) by inserting immediately after subsection (e) the following new subsection:

 “(f) ‘Jurisdiction of the United States’ includes jurisdiction over the areas referred to as eastern special areas in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990; in particular, those areas east of the maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of Russia is measured but beyond 200 nautical miles of the baselines

from which the breadth of the territorial sea of the United States is measured.”.

【AMENDMENTS TO MARINE MAMMAL PROTECTION ACT OF 1972

【SEC. 304. Section 3(14) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1362(14)) is amended to read as follows:

【“(14) The term ‘waters under the jurisdiction of the United States’ means—

【“(A) the territorial sea of the United States;

【“(B) the waters included within a zone, contiguous to the territorial sea of the United States, of which the inner boundary is a line coterminous with the seaward boundary of each coastal State, and the outer boundary is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured; and

【“(C) the areas referred to as eastern special areas in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990; in particular, those areas east of the maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of Russia is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured.”.】

RELATIONSHIP TO ENDANGERED SPECIES ACT OF 1973

SEC. 305. The special areas defined in section 3(24) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802(24)) shall be considered places that are subject to the jurisdiction of the United States for the purposes of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

AMENDMENTS TO PACIFIC SALMON TREATY ACT OF 1985

SEC. 306. (a) DEFINITIONS.—Section 2 of the Pacific Salmon Treaty Act of 1985 (16 U.S.C. 3631) is amended—

(1) by redesignating subsections (h) through (j) as subsections (i) through (k), respectively; and

(2) by inserting immediately after subsection (g) the following new subsection:

“(h) ‘Special areas’ means the areas referred to as eastern special areas in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990; in particular, the term refers to those areas east of the maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of Russia is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured.”.

(b) RULEMAKING.—Section 7(a) of the Pacific Salmon Treaty Act of 1985 (16 U.S.C. 3636(a)) is amended by inserting “and special areas” immediately after “Exclusive Economic Zone”.

NATIONAL SEA GRANT COLLEGE PROGRAM

SEC. 307. (a) DEFINITIONS.—Section 203(6) of the National Sea Grant College Program Act (33 U.S.C. 1122(6)) is amended—

- (1) by striking “and” at the end of subparagraph (E);
- (2) by redesignating subparagraph (F) as subparagraph (G);
- and
- (3) by inserting immediately after subparagraph (E) the following new subparagraph:

“(F) the areas referred to as eastern special areas in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990; in particular, those areas east of the maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of Russia is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured; and”.

(b) INTERNATIONAL PROGRAM.—Section 3(a)(6) of the Sea Grant Program Improvement Act of 1976 (33 U.S.C. 1124a(a)(6)) is amended by inserting “and special areas” immediately after “exclusive economic zone”.

EFFECTIVE DATES

SEC. 308. (a) IN GENERAL.—The amendment made by section 301(e)(3) takes effect on the date of enactment of this Act, and the amendments made by the other provisions of this title, except as provided in subsection (b), shall be effective on the date on which the Agreement between the United States and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, enters into force for the United States.

(b) AUTHORITY TO PRESCRIBE REGULATIONS.—The authority to prescribe regulations to implement the amendments made by this title shall be effective on the date of enactment of this Act, but no such regulation may be effective until the date on which the Agreement described in subsection (a) enters into force for the United States.